Scriptores

RERUM BRITANNICARUM MEDII ÆVI SCRIPTORES,

OR

CHRONICLES AND MEMORIALS OF GREAT BRITAIN AND IRELAND

DURING

THE MIDDLE AGES.

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THE CHRONICLES AND MEMORIALS

OF

GREAT BRITAIN AND IRELAND

DURING THE MIDDLE AGES.

PUBLISHED BY THE AUTHORITY OF HER MAJESTY'S TREASURY, UNDER THE DIRECTION OF THE MASTER OF THE ROLLS.

On the 26th of January 1857, the Master of the Rolls submitted to the Treasury a proposal for the publication of materials for the History of this Country from the Invasion of the Romans to the reign of Henry VIII.

The Master of the Rolls suggested that these materials should be selected for publication under competent editors without reference to periodical or chronological arrangement, without mutilation or abridgment, preference being given, in the first instance, to such materials as were most scarce and valuable.

He proposed that each chronicle or historical document to be edited should be treated in the same way as if the editor were engaged on an Editio Princeps; and for this purpose the most correct text should be formed from an accurate collation of the best MSS.

To render the work more generally useful, the Master of the Rolls suggested that the editor should give an account of the MSS. employed by him, of their age and their peculiarities; that he should add to the work a brief account of the life and times of the author, and any remarks necessary to explain the chronology; but no other note or comment was to be allowed, except what might be necessary to establish the correctness of the text.

The works to be published in octavo, separately, as they were finished; the whole responsibility of the task resting upon the editors, who were to be chosen by the Master of the Rolls with the sanction of the Treasury.

The Lords of Her Majesty's Treasury, after a careful consideration of the subject, expressed their opinion in a Treasury Minute, dated February 9, 1857, that the plan recommended by the Master of the Rolls "was well calculated for the accomplishment of this important national object, in an effectual and satisfactory manner, within a reasonable time, and provided proper attention be paid to economy, in making the detailed arrangements, without unnecessary expense."

They expressed their approbation of the proposal that each Chronicle and historical document should be edited in such a manner as to represent with all possible correctness the text of each writer, derived from a collation of the best MSS., and that no notes should be added, except such as were illustrative of the various readings. They suggested, however, that the preface to each work should contain, in addition to the particulars proposed by the Master of the Rolls, a biographical account of the author, so far as authentic materials existed for that purpose, and an estimate of his historical credibility and value.

Rolls House,
December 1857.

HENRICI DE BRACTON

DE

LEGIBUS ET CONSUETUDINIBUS

ANGLIÆ.

LIBRI QUINQUE

IN VARIOS TRACTATUS DISTINCTI.

AD DIVERSORUM ET VETUSTISSIMORUM CODICUM
COLLATIONEM TYPIS VULGATI.

EDITED

BY

SIR TRAVERS TWISS, Q.C., D.C.L.

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INTRODUCTION.

INTRODUCTION.

The present volume commences with the Assise of Last Presentation, which forms Bracton's Second Treatise on Possessory Actions. The subject of this assise is the possession of the right of presenting a clerk to a vacant church, and as this right of presentation was originally appurtenant to the possession of a manor, or of a tenement forming part of a manor, within which the church was situated, the discussion of the mode of recovering this right, as an appurtenance of a tenement, follows in natural order the Assise of Novel Disseysine, by which possession might be recovered of the tenement itself. In many cases indeed an assise of novel disseysine might enure to the simultaneous recovery of an advowson as an appurtenance of the tenement recovered by the assise, but in some cases the right of presenting to a church had become severed from the manor or other tenement, to which it was originally appurtenant, and thus there might be occasions for an independent proceeding to recover the right of presenting to a church, irrespective of any right to the manor itself, within which the church was locally situated. Further the right of presenting to a church might be an adverse right in regard to the feoffee of the manor within which the church was situated, who might have succeeded by right of inheritance to a manor of which his ancestor had accepted the donation without its appurtenances, or of which his ancestor had accepted the donation with its appurtenances from a feoffee, who was in seysine of the manor, but from the circumstance that he had never exercised the right of presentation to the church could not transfer

the advowson with the manor. How this result was brought about may require a few words of explanation. An advowson of a church was an incorporeal thing, and in its early juridical conception was a right appurtenant to a corporeal thing. It was accordingly capable of being transferred with a corporeal thing by a fiction of law, but the transferree was held not to be in true possession of the incorporeal right until he had exercised it. When he had exercised the right he was held to be in true seysine of it, so as to be capable of transferring it to a third person, but he could not legally transfer the incorporeal right before he had enjoyed it. Accordingly if a person in true seysine of a manor gave it with its appurtenances to another person, and amongst those appurtenances was the advowson of a church, if the donor transferred the manor with its appurtenances to a third person before he had enjoyed the right of presenting to the church, the advowson did not pass to the third person with the manor, but fell back as it were to the original donor of the manor, whose seysine of the advowson had not been effectively divested by the exercise of the right of presenting to the church on the part of his donee, in other words the original feoffee of the manor continued to be the advocate of the church, although he had given away the manor.

The juridical character of the right of advowson, as an incorporeal thing, has been discussed by anticipation very fully by Bracton in his Treatise on Acquiring the Dominion of Things (Book II., Ch. XXIII.), and it is evident from the law cases cited by him in that chapter (Vol. I., p. 433), that the law was well established in the reign of Henry III., that the donee of a manor with its appurtenances could not assign the advowson of a church appurtenant to the manor to a third party, before he had exercised the right of presenting to the church itself. How momentous this principle was in extricating the endowments of the manorial churches from the coils

of feudalism, has not been, I am disposed to think, sufficiently appreciated by writers on the subject of the Right of Advowson. On the other hand the law seems to have been in Bracton's time not quite settled as to the power of the original donor in such a case, after he had resumed the enjoyment of his right of presentation, to give away the advowson by itself without any corporeal thing to a fourth party; but Bracton was himself in favour of the legal power of such a donor to transfer the right of advowson by itself after the likeness of a servitude, and he observes, in support of his view, that the right of presentation might adhere to the church itself, as being a structure of wood and stone, more especially as the right of presenting to the church was termed the advowson of the church.

It may be convenient for the purposes of a more clear understanding of the intricacies of the law touching advowsons to investigate the origin of the office of "Advocatus Ecclesiæ," and thereby to appreciate the meaning of its correlative term "the advocacy or the advowson of a church."

The office of "Advocatus Ecclesiæ" may be traced back to the fifth century after Christ. Van Espen, no mean authority in matters of ecclesiastical law, refers it to a Council of Carthage in the sixth century, but Muratori, whose authority in questions of antiquarian research is perhaps unrivalled, assigns it with more reason to an earlier council of the Church, namely to the second Council of Milevia in Africa, which was convoked to condemn the teaching of Pelagius and of Celestinus under the Pontificate of Innocent I. (A.D. CCCCXVI.) By the sixteenth article of the canons of this latter council, which are printed in the fourth volume of Mansi's Great Collection of Councils of the Church (Florentiæ, 1750-98), it was resolved that the most glorious Emperors (Honorius and Marcianus) should be requested to direct their judges to assign scholastic de-

fenders (defensores scholasticos) to conduct ecclesiastical causes in the Imperial courts, and to defend the churches whensoever they should have need of them. It would appear that by degrees every church of importance came to have its scholastic defender or advocate, who combined the functions of judge for the people with those of legal adviser to the patron of the church, for it had become the established law of the Christian world in the sixth century that the founder of a new church and his heirs should have the patronage of the church, in other words, should have the right of presenting to the bishop a person for his approval to be ordained by him to serve the church. By-and-by the practice grew up that the heir of the founder should not present a person to the bishop for ordination without previous consultation with the advocate of the church, who was appointed by the Emperor in some cases, but in the majority of cases was nominated by the bishop, and in course of time as the kindred of the founders died off, the advocates of the churches came to be the persons whose recommendation of a clerk to fill a vacancy was accepted by the bishops. After the break up of the Western Empire, when the reign of law in Western Europe had become interrupted, bishops came to nominate, and churches came to elect as advocates, men who could protect their clients with the sword in the place of the tongue or the pen, and thus we find in the days of Charlemagne distinguished warriors and not men of the robe filling the office of advocate to the great churches, and the *advocatus ecclesiæ* is repeatedly mentioned in the Salic laws as well as in the capitularies of the kings of the Franks, who themselves appointed advocates for the most famous churches. England was no exception to this practice, of which we have a signal example, which has been handed down to us in a very curious history of the foundation of the famous Benedictine Abbey of Ramsey, in Huntingdonshire. This abbey was founded in the

reign of King Edgar, by Aelwin, the Aelderman or Earl of the East Anglians, and in the *Historia Ramesiensis*, of which a MS. was preserved in the Royal Exchequer at Westminster, the text of which has been published by Gale, in his Collection of Early British Histories (fol. Oxon, 1691). Aelwin is styled by the writer, who was evidently a monk of the abbey, *Advocatus noster*. Further Aelwin's functions of advocate are well described by himself in a passage, in which he is represented as protesting against the monks themselves appearing before a secular tribunal, and in which he asserts that he, as their advocate, was in duty bound to defend them and to be their surety in any cause, in which an appearance on their behalf was required by any lay court. Further the same historian in reciting the various endowments conferred upon the abbey, states that a certain matron, Abfara by name, gave to St. Benedict of Ramsey the land of Halliwell and the Church of Ellesworth, of which she was the advocate (cujus erat advocata), with a certain portion of the manor of Ellesworth. The historian of this abbey thus supplies us not only with an instance in Saxon times of a great abbey having its advocate, but also with an instance of the owner of a manor being the advocate of a church appurtenant to the manor, and as such entitled to give the church with a portion of the manor to a religious house. We have thus evidence, that the patronage of parish churches was organised in England in Saxon times upon the same principle, which was recognised both in France and in Italy, for the *advocatus ecclesiæ* finds a place in the Longobardic laws equally as in the capitularies of the kings of the Franks. Further it was a provision of the laws of Egbert, that no presbyter should be appointed to a church without the authority or consent of the bishop, so that there can be little doubt that Sir William Blackstone was in error in suggesting that before the Conquest all the manorial churches in England were donatives, unless he means

that the formalities of institution and induction, as regulated in Archbishop Becket's time, were novel.

Lord Coke, in his Commentary on Littleton, takes a much sounder view, when he observes that the word "advocatus," as applied to a church, was of great antiquity, although he did not know where to search for its origin, and he cites a dictum of Sir William Herle in 7 Edw. III., that at that time a man hardly knew what an advowson was, and that, when a man intended to grant the advowson of a church, he would in terms grant the church itself. Such a state of ignorance on the part of the laity in the reign of Edward III. need not be surprising, for Bracton himself speaks of the simplicity of laymen in his time, who when they meant to present to a vacant church gave the church in terms to the presentee (fol. 53 b.), whereas the bishop in fact gave the church, when he instituted the advocate's presentee.

Sir William Blackstone's error in suggesting that the manorial churches in England were all donatives before the Conquest has arisen from his not having sufficiently appreciated the great change in land tenure, which ensued in England after the Conquest, for church lands were infeudated equally with the lands of the laity. It is not too much to say that the church in England was feudalised by William the Norman. There can be no doubt that before the Conquest church lands were all allodial, and that when William the Norman divided the lands of England into a certain number of knights' fees, the estates of the bishops and of the abbeys escaped being carved out into knights' fees by the owners consenting to find so many knights to answer for the military service due from their lands. With regard to the larger manors they were converted into baronies, whilst the owners of the smaller manors ceded their churches with their lands to some powerful lord, and received them back as *beneficia*. The great lords on the other hand dealt with the churches appurtenant to the lands granted

to them by the Conqueror upon the same principle which they applied to the lands themselves, and granted them freely to clerks of their own choice without troubling themselves to present their clerks to any bishop for his approval. Still further in many cases they kept in their own hands the endowments of the churches, and allowed the service of the church to be altogether neglected. Hence the general condition of the manorial churches when Henry I. came to the throne was that of free donatives, and there is no chapter of English church history which deserves more to be written afresh, than that which would narrate the various steps by which the manorial churches were reconverted from the feudal condition of donatives to that of benefices presentative. Perhaps I should add that I use the term manorial churches here to denote the churches, of which the advowsons were appurtenant to manors, and which were not appropriated to abbeys or cathedrals. The term "parochial churches" might be ambiguous, as, although the manorial churches were also parish churches, many parish churches were appropriated to corporate bodies, and have not recovered even in the present day the *status* of benefices presentative.

The first stage of the arduous process of extricating the church from the coils of feudalism was initiated by Archbishop Anselm in his dispute with Henry I. on the subject of investitures, in which the sagacious mind of the king struck out a line of compromise, and, as Canon Stubbs has justly observed, anticipated by 14 years the principle, upon which the Concordat of Worms was framed between the Pope and the Emperor. The compromise of investitures, as it has been termed, was accomplished two years before the death of the archbishop. The primacy of Rudolph, his successor, seems to have passed away without any effort on his part to advance the cause of ecclesiastical reform, but Archbishop Corbel, who succeeded to the Metropolitan See

of Canterbury in 1123, convoked a council of bishops at London in 1126, in which it was resolved that the clergy who had churches or benefices should be deprived of them, if they refused to be ordained (though their bishops invited them to it) that they might live more at liberty. It is a fair presumption from this canon, Johnson's Canons, Part II., London, 1720, that the lords of manors were at that time in the habit of giving their churches to clerks in minor orders, without any reference to the bishop, and this inference is confirmed by another canon of the same council, which ordained that no monk or clerk should accept a church, tithe, or ecclesiastical benefice at the hand of a layman without the bishop's consent, and that every such donation should be null, and the offender should be liable to canonical punishment. King Henry I. is said to have assented to all the decrees of this council, which had also the countenance of the Papal Legate. Further we find at the commencement of Stephen's reign among the canons of a Legatine Council held at Westminster in 1138, a canon which ordained that "no one should accept a church or benefice from the hands "of a layman," which is evidently to be interpreted as meaning, that a clerk should not accept an ecclesiastical benefice as a donative from a lay hand. It cannot be gainsayed that the progress of ecclesiastical reform had been hitherto in a safe direction, and it is probable that the wise policy of Henry I. was mainly influenced by Bishop Roger of Salisbury, who filled the office of Justiciar of England from 1107 to 1139.

It is not too much to say, that England is more indebted to this famous prelate for the organisation of her judicial system, the main features of which have been preserved to the present day, than to any of the great justiciaries who succeeded him. He created, as it were, the King's Court of Exchequer, and he trained up a body of men distinct from the Norman nobles, who furnished sheriffs to the counties, barons to the Exchequer,

and justiciaries to the Curia Regis. The capital blunder of king Stephen's reign was his arrest of Bishop Roger, and of his son Nigel, Bishop of Ely, whose son was subsequently Bishop of London, and wrote the Dialogus de Scaccario. The effect of this act of short sighted policy was to alienate from the king the whole body of the clergy, who resented the injury done to the bishops, whilst the entire administrative system of the country came to a dead lock. Their arrest, which was followed by the arrest of Bishop Roger's son, also named Roger le Poor, who was the king's chancellor, was the signal for a civil war, which lasted more or less for 14 years, a period of feudal anarchy. Archbishop Theobald of Canterbury held to the Empress Matilda during this troubled period, but his influence over the clergy was, for some time, neutralised by Bishop Henry of Winchester, who stood by the king, and who had obtained the commission of legate from Rome in 1139. His legatine authority, however, terminated with the death of Pope Innocent I. in 1143, but although the two next following successors of Innocent I, were opposed to King Stephen, the office of papal legate was not conferred on Archbishop Theobald before 1150. The bishops of England at last, under the influence of Archbishop Theobald, resumed their unity of action, and they refused their assent to the proposal of King Stephen that his son Eustace should be associated with him in the kingdom. The embers of civil war were soon afterwards fanned once more into a flame by the arrival in England of Henry of Anjou, the son of the Empress Matilda and the nephew of Henry I. in the spring of 1153, but the joint mediation of Archbishop Theobald and Bishop Henry of Winchester was ultimately successful in re-establishing peace. Under the treaty of Wallingford Henry of Anjou was recognised as heir to the kingdom of England. King Stephen's death in the next following year put an end to a reign, which had brought in its train great suffering to the

people of England, but the anarchy of King Stephen's reign had one good effect; it undermined the foundations of feudalism in England, and it rendered possible the realisation of great legal reforms in the reign of Henry II.

It would appear from a Papal letter addressed from Rome by Alexander III. to the Archbishop of Canterbury and his suffragans, that the practice was still prevalent in the early years of the reign of Henry II. for clerks to accept benefices without requesting the consent of the ordinary. The archbishop according to this papal letter, which is preserved in the Decretals of Gregory IX., Lib. VII., De Institutionibus, had excommunicated all such clerks, and the Pope thought it right to confirm the act of the archbishop, and to forbid the English bishops to absolve any such excommunicated clerks before they had made due satisfaction. How the necessity of the bishop's institution came to be recognised by the king's justiciaries as a condition *sine quâ non* for a clerk to benefit by his presentation to a church does not, as far as I am aware, appear from any canons or constitutions of the reign of Henry II., but the fact is matter of inference from the Constitutions of Clarendon A.D. 1164, by the first article of which it was resolved, that if any controversy should arise about the advocacy and presentation of churches between laymen, or between laymen and clerks, or between clerks, it should be treated of and determined in the court of the king. It was to give effect to this constitution that the assise "De Advocationibus," to which Glanville refers in his fourth book, was drawn up and published by King Henry II. This assise deserves to be carefully studied, for it imposed upon a party claiming the patronage of a church the necessity of showing that either he himself had previously presented a clerk to the church, or that some ancestor of his had presented to the church in the reign of Henry I. or since the coronation of Henry II. In fact, few persons reading Glan-

ville's chapter on Advowsons of Churches would suppose that the assise "De Advocationibus Ecclesiarum" had been introduced with the object of enforcing indirectly upon the patrons of churches the duty of presenting their clerks to a bishop, inasmuch as it constituted the last presentation the test of the seysine of the right of advowson. The recognition to be made by the jurors of the assise in Glanville's time was thus stated, "Quis advocatus tem-"pore pacis ultimam personam mortuam ad ecclesiam "illam præsentaverit?" It would seem that the words "tempore pacis" in the original writ were intended to exclude the reign of King Stephen, although the words were retained in the writ in Bracton's time, and had a more general interpretation given to them, being taken to signify a time free from violence and wrong.

It will be seen on comparing Bracton's treatise De Assisa Ultimæ Præsentationis with Glanville's treatise De Advocationibus Ecclesiarum, that the constitution of the Lateran Council of 1179 on the subject of lapse had been received as law in England in Bracton's time. But it is to be noted that the decree was received only with a certain modification, for whereas the decree of the council allowed a term of six months to a clerical patron, and only four months to a lay patron, this distinction between clerical and lay patronage did not obtain in England, but in all cases, an *utile tempus* of six months was allowed to the patron to present a clerk. This doctrine of lapse was all that was wanting to make the law of advowson once more effective. As long as churches were infeudated, the lord of the manor could retain possession of the church and enjoy personally the fruits of the glebe or the rents with which the church was endowed. It was not enough to revindicate for the churches their presentative character, unless the lord was compellable to present a clerk to the bishop on the vacancy of a church. Pope Alexander III. conferred an unspeakable boon upon Christendom in completing the

disinfeudation of the parish churches, which were appurtenant to manors, by declaring the patronage of them to be escheated to the bishop, if it were not exercised within six months. What is strange is, that the term "benefice," which is a tradition of a time full of evil for the church, when it was really in chains to the temporal power, has been retained as a title of superiority on the part of churches appurtenant to manors in distinction from churches appropriated to cathedrals and abbeys. So that what was originally a term of reproach has become a term of honour, whilst the word "advowson," which had its origin in the best ages of the Church and of which the maintenance identifies the Church of the Plantagenets with the Church of the Saxon kings, is of little or no repute amongst the clergy themselves, and many would desire to abolish it under the mistaken notion that it is a record of lay usurpation.

There is a passage in Bracton's treatise which seems to throw light upon the time when it was composed, namely where he treats of the difference between the writ of "quare impedit" and the writ of "quare non permittit" in Chapter VI. The latter writ was available to a class of persons, who were not in seysine of the right of presentation, but were for some other reason entitled to the right of presenting to a church. Bracton in the fourth section of the above chapter enumerates three classes of persons so entitled by reason of their temporary possession of a tenement, to which the advowson was appurtenant, first husbands who were in such possession by right of the dower of their deceased wife, under the law of England (per legem Angliæ); secondly, lessees who were in such possession in virtue of a grant for a term of years; thirdly, creditors who had such possession of a tenement by way of pledge. Now the law in respect of dower and advowsons underwent a change in 1259 (43 H. 111), which is not noticed by Bracton in this passage, and Britton (L. IV. Ch. vi.) has

accordingly omitted from his list of persons entitled to an action of "quare non permittit," husbands holding possession of the dower of their wives after their death under the "Lex Angliæ." But the silence of Bracton as to the change made in the law by the provisions of Oxford in that year for compelling impeders of presentations to appear and plead, lest the vacant living should lapse to the bishop, is still more significant. Bracton states that William de Ralegh from the necessity of the case had strained the existing law to repress the malice of persons, who designedly impeded presentations in order that lapse might be incurred, and that a new practice had been introduced *per consilium curiæ,* under which impeders who did not appear to the summons of the King's Court were liable to be distrained by the sheriff. And further Bracton goes on to say that an inhibition ought to issue to the Bishop, that he should not admit a clerk at the presentation of anyone until the plea in the court of the king had been terminated. Under the provisions of Oxford, which were drawn up by the barons and ratified by Henry III. in 1259, which were twice republished by him, and after the general pacification were embodied in the Statute of Marlbridge in 1267, it was provided that in a plea of *quare impedit* if the impeder did not appear on the day assigned nor sent an essoiner, he was to be attached for another day, and if on that day he neither appeared nor sent an essoiner, he was to be distrained by the sheriff, and thereupon if he still made default the court was to write to the Bishop, that the reclamation of the impeder should not be allowed to stand in the way for that turn of the presentation. Bracton would hardly have omitted to notice this important change in the law, if it had been accomplished at the time when he wrote his chapter on the proceedings before the justiciaries, where a party had been summoned to answer to a writ of "quare impedit."

It is obvious, that the law in respect of the right of advowson had become much more settled before the con-

clusion of the reign of Henry III. than it was when Glanville compiled his work on the Laws and Customs of England. Thus we find in the case of clerks, who had been tortiously presented to churches and upon such tortious presentation had been instituted by a bishop under a "bonâ fide" belief that the presentation had been made to him by the advocate of the church, that Glanville cites a statute, which had been passed expressly to maintain such clerks during their lifetime in the possession of their churches, whereas in Bracton's time the ordinary, if he had instituted a clerk to a church upon the presentation of a person who was not the true patron, might be adjudged to set the church free, or to make satisfaction to the true patron by collating his clerk to an equivalent church. It would also seem that in Bracton's time endeavours were occasionally made by the losing party to elude the judgment of the King's Court in an assise of last presentation by applying to the Court of Rome for letters from the Lord Pope (auctoritate literarum Domini Papæ) authorising him to commence proceedings afresh before other judges than those of the King's Court, as plaintiff respecting the same church.

Before Glanville's time the practice would seem to have been, where the right of advowson was claimed by adverse parties, for a suit to be instituted between them in the Court of Christianity. Under the Constitutions of Clarendon (A.D. 1164) however it was resolved that all such suits should be commenced and terminated in the Court of the King, and Glanville accordingly lays it down as law in his time that, where adverse parties claimed before a bishop the right of advowson, a writ of prohibition might issue to the bishop from the King's Court at the petition of either party, and the bishop should be forbidden to proceed further in the matter, until the right of advowson had been determined in the King's Court. The proceeding therefore, to which Bracton refers, was a device to elude the provisions of the Constitutions of Clarendon under the authority of letters from the

Pope, under which the losing party sought to transfer the cognizance of the question from the King's Court to the Court of Christianity, in which case the King's justiciaries were empowered to issue a writ of prohibition to the Court of Christianity. The proceedings in such cases of prohibition are more fully discussed by Bracton in the third and fourth chapters of his Treatise on Exceptions, which concludes his work; and which will form part of a future volume.

The assise of last presentation, as distinguished from the assise of the right of advowson, had obviously a twofold tendency, in the first place to constrain indirectly the patrons of vacant churches to present their clerks to a bishop for institution, and in the second place to promote the severance of advowsons from the lordships of manors, and so to accelerate the disinfeudation of property dedicated to the services of religion. The assise of mortdancester, which follows next in the order of Bracton's treatises, was intended for the protection of heirs against wrongful intrusions made by lords of manors upon lands, of which the ancestors of such heirs had died seysed. It has been thought, with some reason, that the proceedings in the King's Court under a writ of mortdancester, which were in use in Glanville's time, had their origin in the reign of Henry II., and were not a modification of a previous form of proceeding for an identical object, as was the case in regard to a writ of right. What happened in the reign of Henry II. was probably a transfer of jurisdiction in such questions from the manorial courts to the King's Court, or at all events, if the cognisance of such questions was not altogether withdrawn from the manorial courts, access to the King's Court was made available on all occasions to the heir, and the King's writ was made returnable "*coram me vel justiciis meis.*" These writs might be sued out by the heir in the reign of Henry II., in any one of these cases: (1.) where the ancestor had died within the realm since

the coronation of the King; (2.) where he had set out on a pilgrimage to the Holy Land or to the shrine of Saint James of Compostella since the coronation of the King, and had died in the course of such pilgrimage; (3.) where he had entered into a religious order since the coronation of the King, such entry into a religious order being held to constitute the civil death of such ancestor. A two-fold alteration in the writ of mortdancester had taken place before Bracton wrote his Treatise. It was one of the provisions of the Great Charter of King John that the king, or during his absence out of the realm his chief justiciary, should send two justiciaries into every county four times in every year to hold assises of novel disseysine, and mortdancester, and last presentation, which should only be held in the counties in which the cause of action had arisen. Henry III. on his accession to the throne confirmed this provision of the Great Charter, and accordingly the writ in use in Bracton's time, which was addressed to the viscount, directed him to summon a jury of twelve loyal men of free condition to appear *coram justiciariis nostris ad primam assisam cum in partes illas venerint* (fol. 253 b). A further alteration had been made in the writ as regards the time, within which the recognition before the King's justiciaries should be limited. Under a provision made in the Parliament summoned to Winchester in 21 Henry III. which is recorded in the Annals of Burton (Rolls Edition, p. 252), and of which an entry has been made in the Patent Rolls of 21 Henry III., the recognition was not to extend further back than to the last return of King John from Ireland. The tenor of the King's Letters Patent is as follows: "Quum nuper provisum fuit quod
" quædam brevia nostra de cursu mutentur in articulis
" subscriptis, videlicet, in narratione descensus ab ante-
" cessoribus in Brevi de Recto, quod prius fieri solet a
" tempore Henrici regis senioris, anno et die quo obiit,

" provisum est, quod de cætero non fiat computatio a " tam longinquo tempore, sed a tempore regis Henrici " avi nostri. Brevia mortis antecessoris et Brevia de " Nativis, quorum terminus prius fuit post primam " coronationen Ricardi regis avunculi nostri, de cætero " non excedant ultimum reditum domini Johannis regis " patris nostri de Hybernia in Angliam."[1] This limitation of time continued in force until the third year of the reign of King Edward I., when the enquiry under an assise of mortdancester was further limited to the time of the coronation of Henry III., the father of the reigning king.

The limitation of time in the writ of mortdancester during the reign of Henry III., throws light upon the time at which Bracton composed his work, or at all events upon the time at which he prepared his treatise " De Assisa Mortis Antecessoris." There are three if not more MSS. of Bracton's work, one of which has been very recently discovered in the course of cataloguing the Digby MSS. in the Bodleian Library, Oxford, in which the writ is set forth precisely in the terms, in which it was drawn up during the reign of Henry III. On the other hand the great majority of the MSS., amongst which must have been those after which the text of Tottell's edition of the printed Bracton of 1569 was settled, exhibit a confused form of writ, in which a parenthesis is introduced stating that the limitation of time was altered in the reign of Edward I. Thus the writ as it stood in the reign of Henry III., and as we find it set forth in MS. Rawlinson C. 160, was in this form, "Rex vicecomiti

[1] In the Editor's note at p. 197 of the present volume it is stated that this limitation of the writ of mortdancester was introduced by the Statute of Merton, 20. H. III. and such would be a justifiable inference from the mode in which it is printed in the Statutes at Large, where it appears as part of the Statute of Merton, but the better opinion would seem to be that, it was enacted in the following year in a Parliament held at Westminster.

" salutem. Si talis fecerit te securum de clameo suo
" prosequendo &c. tunc summone per bonos summoni-
" tores duodecim liberos et legales homines de vicineto
" de tali villa, quod sint coram justiciariis nostris ad
" primam assisam, cum in partes illas venerint, parati
" cognoscere sacramento, si talis pater vel mater, vel
" avunculus vel amita, frater vel soror ipsius talis fuit
" seisitus vel seisita in dominico suo ut de feodo de
" tanto terræ et tanto redditu cum pertinentiis in tali
" villa, de quibus obiit seisitus post ultimum reditum
" Johannis patris nostri de Hibernia in Angliam, et
" si prædictus talis ejus hæres propinquior sit."

The writ as originally drawn up in Glanville's time was of this tenor:

"Rex vicecomiti salutem. Si G. filius F. fecerit te
" securum de clamore suo prosequendo, tunc summone
" per bonos summonitores duodecim liberos et legales
" homines de visineto de illa villa, quod sint coram
" me vel justiciis meis eo die parati sacramento recog-
" noscere, si T. pater prædicti G. fuit seisitus in
" dominico suo sicut de feodo suo, de una virgata
" terræ in illa villa die qua obiit, si obiit post primam
" coronationem meam, et si ille G. propinquior hæres
" ejus est, &c."

It will be seen on a comparison of this earlier form of the writ, which was in use in the reign of Henry II., with that which was in use in the reign of Henry III., that it differed both in respect of the judges before whom it was to be returned, and in respect of the time within which the recognition was to be limited, and further it would appear, as observed by Reeve in his History of English Law (Vol. I, p. 369, edition of 1869), that, whereas in Glanville's time the writ on the face of it seems to have been confined to an inquiry as to the seysine of the father, it might embrace in Bracton's time an inquiry into the seysine of the father or mother, brother or sister, uncle or aunt. I am not, however,

quite satisfied, that we should be justified in adopting the strict interpretation, which Reeve advocates, of the language of the writ as set forth by Glanville, inasmuch as Glanville in the previous chapter speaks of the heir claiming the seysine of his ancestor, and in a subsequent chapter in explaining the course of proceeding says, that the assise would be stayed, "si a tenente ipso dicatur "ipsum petentem inde fuisse seisitum post mortem "patris vel *alicujus antecessoris sui.*" If on the other hand the writ of mortdancester, as set out by Glanville, is to be construed strictly, it is manifest that the right of escheat on the part of the chief lord, as it existed at that time, had become much curtailed in the reign of Henry III.

The writ of mortdancester as set out in Tottell's edition of Bracton of 1569, which is followed in the subsequent edition of 1640, is in hopeless confusion. The text, as will be seen by reference to fol. 253 b, is not merely corrupt in itself, but it is rendered more confused by the clumsy introduction into the text within a parenthesis of a passage, which was probably appended as a note by the side of the original MS.

"Rex vicecomiti salutem. Si talis fecerit te securum de clameo suo prosequendo &c. tunc summone "per bonos summonitores duodecim liberos et legales "homines de visneto de tali villâ, quod sint coram "justiciariis nostris ad primam assisam, cum in partes "illas venerint, parati sacramento recognoscere, si talis "pater vel mater, vel avunculus, vel amita, frater vel "soror ipsius talis fuit seysitus vel seysita in dominico "suo ut de feodo de tanto terræ et tanto redditu cum "pertinentiis in tali villa, de quo obiit, et si obiit post "ultimum reditum regis Johannis patris nostri de "Hibernia in Angliam (*et tempore regis Edwardi "mutatus fuit terminus iste post coronationem regis "Henrici patris ipsius regis Edwardi*) et si prædictus "talis ejus hæres propinquior sit."

It is hardly open to doubt that the words *de quo obiit* which occur in this version of the writ, are a misprint for *die quo obiit*, which is the general reading of the various MSS., in which a writ containing a parenthesis of a like character to that of the printed writ, although not always precisely in the same words, is found. The Glastonbury MS. also adds the words "Ista data fuit "per Statuta de Merton," so far confirming the generally received tradition, that the limitation of time to the last return of King John from Ireland was made in the Parliament of Merton, which tradition as we have already shown may with good reason be rejected. It is not very obvious at first sight on what grounds the Parliament of Westminster (21 Henry III.) should have chosen the last return of King John from Ireland as the new limitation for writs of mortdancester. King John made three visits to Ireland. The first occurred during the lifetime of his father, shortly after Henry II. in a general council held at Oxford, A.D. 1177, had appointed his youngest son King, or as some chroniclers say, Lord of Ireland (Dominus Hiberniæ), which appointment was confirmed by Pope Alexander III. The second visit happened A.D. 1185, also during the lifetime of King Henry II., but according to the Chronicle of Benedict of Peterborough (Rolls Edition, Vol. I, p. 339). King John did not return to England on this occasion with any glory, as he was deserted by his army in Ireland and came away almost as a fugitive. The third and last visit of King John took place A.D. 1210, when he was in possession of the English throne, and this expedition was attended with great military success, although it was stained by execrable acts of cruelty. It was, however, held forth to the citizens of London as a glorious expedition, and Matthew Paris speaks of King John returning triumphant to London, and immediately extorting from a convention of all the clergy of the realm of England an enormous talliage of one hundred

thousand pounds sterling (Historia Anglorum, Rolls Edition, Vol. II., p. 123). The same author elsewhere in his Abbreviatio Chronicorum (id. Vol. III., p. 225), speaks of the tax on this occasion as amounting to one hundred thousand marks of silver. Whatever may have been the correct amount of this nefarious exaction, for such is the term which Matthew Paris applies to the Royal tax, there can be no doubt that it constituted on that account a well marked epoch. We are disposed, however, to think that the Parliament of Westminster selected the epoch of King John's last return from Ireland, as the limit of inquiry under a writ of mortdancester and under several other writs, such as those of cosinage, ael, and bisael, on other considerations, namely, because the year 1210 was the last year of orderly government and of what might be called a time of peace in England, for in the next following year Pope Innocent III. absolved from their fealty all the subjects of the Crown of England, and the nobles of King John both in England and on the Continent rose in rebellion against him. Further, in the next following year the Pope formally deposed King John from the throne, and proclaimed to Europe a general crusade against him, as the enemy of the Universal Church. These considerations may have influenced the Parliament of Westminster in deciding that an inquiry under a writ of mortdancester might with propriety be carried back as far as the year 1210, which would correspond very closely with the scope of the inquiry in a writ of last presentation, which has been already mentioned, namely, "who last presented to the church in question in time "of peace (tempore pacis)"?

It may excite some surprise at first thought, that the scribes of the MSS. in which the variation of the writ in the time of King Edward is mentioned, did not substitute the new Edwardian form of writ in the place of that which was in use in the reign of Henry III., after

the example of Bracton himself, who had substituted the writ of Henry III. in the place of that of Henry II. This omission on their part may admit of a simple explanation. In the first place the language of the law was undergoing a change in the latter years of Henry III., and we find that the first statute (Westminster I.) passed in the reign of Edward I. is drawn up in Norman French, and the provisions of it, which applied to the writ of mortdancester, are in these words:

"Et que brief de mort de auncestre, de cosinage, " del aiel et d'entre, et brief de neyvte cient le terme " del coronement mesme le Roy Henry et nemye " avaunt."

As the French tongue came to be generally adopted in the circuits of the judges in the reign of Edward I., and French forms of writs and pleadings were used in holding the assises, it would obviously have been inappropriate for the copyist in the reign of Edward I. to have inserted the new French form of writ of mortdancester in Bracton's Latin text. The King's Courts had undergone a great reform in the latter years of Henry III. King Edward's chief advisers were lay lawyers rather than clerks and bishops, and the revival of the office of Chief Justice by Henry III. under the pressure put upon him by the provisions of Oxford, in 1259, was but the prelude to a more systematic organisation of the King's Courts into three divisions, each with its own staff of justiciaries and its own sphere of work, under the title of the King's Bench, the Exchequer, and the Common Pleas. The King's Bench and the Exchequer were time-honoured names, that of the Common Pleas had originated with the Great Charter of King John, under the seventeenth article of which it was provided, "Communia placita non sequantur Curiam nos- " tram, sed teneantur in aliquo certo loco." This provision of the Great Charter had probably been hitherto eluded or had received scanty attention, but

henceforth the admimistration of justice both at Westminster and in the counties was made both symmetrical and effective. We might, however, with some reason have expected to find an explicit reference to the Edwardian legislation as regards the assise of mortdancester in the law treatise known as Britton, which is in Norman French, and according to Lord Coke's authority was published in 5 Edward I., but Britton assigns no definite time of limitation to the writ of mortdancester, further than by observing that the same limitation of time is fixed for writs of Cosinage, Ael, and Besael as for writs of mortdancester. This identity of limitation as regards all these writs rests upon the Statute of Westminster, I., so that Britton's language leads to the inference, that he was acquainted with the subject matter of that statute. I do not propose to discuss at the present moment the authorship of Britton, nor the time at which the work was completed. There are several matters referred to in the text of Britton, if such references have not been added to the original work, which warrant us in fixing upon the twentieth year of Edward I. as the probable period of the completion of the work. Such seems to be the opinion of Mr. Francis Morgan Nichols, as expressed by him in his introduction to his recent excellent edition of Britton, and for which opinion he gives good reasons; but the silence of Britton, equally as of Bracton, as to certain changes made in the law is better evidence of the period, at which they respectively composed their works, than any references to new constitutions, as such references may have been additions on the part of the scribe. It has already been observed that the words *de quo obiit*, which occur in Tottell's text of the writ of mortdancester are probably an unintentional misprint for *die quo obiit*, which phrase, together with the phrases *die quo habitum religionis assumpsit*, and *die quo iter peregrinationis arripuit*, Bracton proceeds to discuss at length in fol. 264. This leads up to a discussion as to

the signification of the term "day," and as to the division of the artificial day into twenty-four hours, and then Bracton goes on to say that an hour is made up of forty moments. "Hora autem fit ex quadraginta momentis." This division of the hour, which was apparently received at Westminster in Bracton's time, is worthy of remark. The reading *quadraginta* in letters is found in MS., Rawlinson C. 160, and the reading XL. in numerals is found in MS., Rawlinson C. 159. There can be little doubt that *quadraginta* is the correct number, inasmuch as Bracton adopts the same division of the hour in his chapter De Essoniis, fol. 359 b., in which he discusses some of the legal peculiarities of leap year. Britton in his corresponding chapter (L. III. Ch. xvii.) in discussing a similar phrase, "del jour qe il morust," follows the same system as Bracton in dividing the day into twenty-four hours, but he does not allude to any division of the hour into moments or minutes as generally adopted in his time. His silence as to leap year may be attributed to the circumstance, that before his work was completed leap year had been the subject of a Parliamentary statute, the date of which has been a matter of dispute, but the editors of the recently revised edition of the Statutes have adopted the date of 9th May in the fortieth year of King Henry III., upon the authority of the Red Book of the Exchequer, long preserved at Westminster. The date assigned to the Bissextile Statute in Cotton MS., Claudius, D. 2, is 44, H. 111.

I have endeavoured in vain to discover any contemporaneous evidence, other than Bracton's, of the division of the hour into forty moments having been received in England during the reign of Henry III. We know from various sources that such a division of the hour was used at Bologna by Accursius, the founder of the school of the Glossatores, whose son Franciscus accompanied King Edward I. to England in 1273, and spent eight years in England, being one of the most trusted advisers of the

king in organising his law reforms. But this visit of Franciscus to England would be too late to account for Bracton's use of this division of the hour, and I am disposed to think that it had been adopted in the English law courts after the example of the Italian civilians before the middle of the thirteenth century. That the division of the hour into forty moments was not a technical division confined to professional legists may be inferred from its mention by two authors in connexion with other divisions of the hour. Papias, for instance, an Italian Grammarian of the eleventh century, writes thus: "Athomi 376 faciunt unum ostentum. "Ostentum unum et dimidium facit unum momentum. "Momenta duo et duæ partes unius faciunt partem unam. "Una pars et I. facit minutum unum, duo minuta faciunt "punctum unum. Quinque vero puncti faciunt horam "unam. Hora igitur habet Athomos 22,560. ostenta "60, momenta 40, partes 15, punctos 5." The other citation is from an unknown author of a treatise "De Mensuris," which has been preserved by Goesius in his collection of Rei Agrariæ Auctores, Amstelredami 1674. The writer, after discussing the subject of weights, and how the year is capable of being divided after the manner of a pound weight, goes on to say, "Libra dicitur "quicquid per duodenarii numeri perfectionem adimpletur. Nam libra dici potest annus, qui constat "ex quatuor temporibus et xii. mensibus, et ex lii. "hebdomadibus et die vel quadrante. Libra esse potest "æquinoctialis dies sine sua nocte, qui constat xii. "horis: hora constat ex v. punctis, x. minutis, xv. parti- "bus, xl momentis, lx ostentis." It will be seen that both these authors agree as to the division of the hour into forty moments, and as to the proportion which the *ostentum*, evidently the forerunner of the modern minute, bore to the *momentum*, and also as to the division of the hour into fifteen *partes*, they also agree in their computation of the *puncti*, and, further, the geometricians seem

to have been familiar with a division of the hour into ten *minuta,* which was also known to Papias.

The early history of horology in England is involved in much obscurity, and it is a disputed question whether automatous clocks moved by weights and wheels were known in England before the fourteenth century, when Richard de Wallingford, who had the reputation of being one of the first mathematicians of his age, constructed an astronomical clock for the monastery of St. Albans, of which he had been elected abbot in 1326. He died in 1335, before the clock was completed. This clock is sometimes spoken of as the oldest clock known, and if its priority as an astronomical clock were in question, it is probably of earlier origin than any of the famous astronomical clocks in the German or Burgundian cathedrals. But there is good reason for believing that the astronomical clocks of the fourteenth century were not the earliest species of clocks moved by wheels and weights. The astronomical clock was a highly complicated mechanical toy, a kind of rotatory almanac for all time, which made known not merely the hours of the day and of the night, but the days of the month, the fasts and festivals of the year, the course of the heavenly bodies and their influence on the tides, &c. The earliest known clock of this description was a present from the Sultan of Egypt, in 1232, to the Emperor Frederic II., and the historian Trithemius tells us that it was moved by weights and wheels. The mechanism of this clock was therefore constructed on a totally different principle from that of the ancient water clocks, of which we have an equally famous instance in a clock sent by the King of Persia, in the year 807, as a present to the Emperor Charlemagne. This clock was of a highly ingenious character, but it had no affinity to modern clocks, being kept in motion by water passing through a tube and dropping into a cup in accordance with a system of motive power invented, according to Vitruvius (l. ix.,

c. viii.) by Ctesibius of Alexandria in the third century before Christ. The complicated astronomical clocks, on the other hand, were not suited to the open air, and the knowledge which they imparted was chiefly of interest to learned men.

The less ambitious task of indicating the hours of the day and of the night to the public out of doors is said by Italian chroniclers to have been first discharged by a clock set up on a lofty tower in the city of Padua by Ubertinus, Prince of Carrara, somewhere about 1340. This clock was constructed by a physician, who combined the active exercise of high mathematical science and consummate mechanical skill with the practice of medicine. His name was Jaques Dondi, and he is sometimes confounded with his son, also a mechanician of remarkable talent, who was ennobled by the Emperor and transmitted to his family the surname of Dall' Horologio. We need not however travel so far as Italy, nor wait for the fourteenth century to make acquaintance with a clock set up on a tower for the service of the public out of doors. There is, for instance, a well established tradition in England that a clock of an earlier date than the famous clock of Dondi was set up on a tower near Westminster Hall under very memorable circumstances. The clock in question is said to have been constructed out of the proceeds of a fine of 800 marks imposed upon Chief Justice Hengham in 1288, in consequence of his having altered a record of his court, whereby a poor defendant was to pay 6*s.* 8*d.* instead of 13*s.* 4*d.* Lord Coke quotes this tradition as resting on a very solid foundation, and the imposition of the fine of 800 marks upon the chief justice for the cause alleged is cited by the king's justiciaries on three separate occasions, namely in the reigns of Richard III., of Queen Elizabeth, and of William III., as establishing a precedent against altering any record of the King's Court, after it has been once made up.

Further, Mr. Justice Southcote in the case which oc-

curred in the early part of the reign of Queen Elizabeth, not merely mentioned the tradition of the fine and its employment, but added that the clock still continued there, which had been furnished out of the fine imposed upon the chief justice, and he clenched his refusal to make an alteration in the record of his court by this remark, "I do not intend to have to build another clock tower." The Clock House itself continued in existence in a ruined state as late as the year 1715, but I have not met with any reference to the clock itself since the reign of the queen above mentioned. There is also a record of a large new clock having been supplied to the Cathedral of Canterbury, A.D. 1292, at an expense of thirty pounds, and as this clock was not a famous clock in history, like many cathedral clocks of the next following century, it may be presumed to have been an ordinary clock, in which a hammer struck the hours of the night and of the day upon a bell (campana) as was the case, without doubt, of the clock set up on Hengham's clock tower, the bell of which when struck could be heard in all the courts of law at Westminster. A learned editor of "Blackstone's Commentaries" is disposed to discredit both Lord Coke and Mr. Justice Southcote on the ground that automatous clocks moved by weights and wheels were not invented before the fourteenth century, but his reasoning involves a *petitio principii*, and he does not suggest any other probable origin of the Westminster clock tower. Besides, the class of clocks, of which none are known to have been constructed by European mechanicians before the fourteenth century, were clocks of most complicated mechanism, which was the refined outcome of an art, which had for sometime ceased to be in its infancy. No one can suppose that the clock of the Monastery of St. Albans, already mentioned, could have been constructed by Richard de Wallingford without the aid of skilled workmen to carry out his conceptions. Before Sir

Charles Babbage could carry into execution in the present century the conception of his wonderful calculating machine he had not merely to find skilled workmen, but to invent tools for them to work with. And it is not reasonable to suppose that the famous clock of Bologna of the year 1356, and the famous clock of Paris of 1364, and the famous clock of Strasbourg of 1370, not to mention other famous clocks of the fourteenth century, were amongst the first attempts to construct clocks kept in motion by weights and wheels. The fact, that such a method of maintaining the movement of a clock was practicable, was made known in Europe before the middle of the 13th century by the arrival of the *horologium* already alluded to, which was sent in 1232 by the Sultan of Egypt to the Emperor Frederick II. The further fact that the hour was divided into *momenta* before the middle of the 13th century is also clear from the circumstance that such a division of the hour was used by Accursius, who was a Professor of Law in the University of Bologna as early as 1221, and died somewhere about 1263, having renounced his professorship after forty years' service in order to complete his *Gloss* in the quiet of his country residence. There can also be little doubt that the term "momentum," as a division of the hour, had reference to the movement of a clock impelled by weights and wheels, whilst the term "ostentum" may have been of earlier origin, and may have been applied to those water clocks, in which a figure under the action of water passing through a tube and falling into a cup raised its hand and pointed to a numeral engraved upon a column, thereby indicating the hour of the day. Bracton makes no allusion to the division of the hour into sixty "ostenta," but he speaks of its division into forty "momenta" without any further explanation, as if that mode of dividing the hour was well known in his day. I have been unable, however, to find any mention of this division of the

hour since his time, except in commentators on the Gloss of Accursius, and the Astronomer Royal, Sir George Airy, who at my request has been kind enough to investigate the subject, has informed me that he has been equally unsuccessful. It is one amongst many instances, in which an intermediate stage in the process of a great art has been forgotten, where a new invention has quickly superseded an older one. Perhaps if the Registry of Wills at Somerset House were carefully searched there might be found some allusion to clocks in a will of the thirteenth century, as it is to the will of Archbishop Parker, made in 1575, that we are indebted for our knowledge of the fact, that watches were at that time made in so compact a form that the archbishop carried one about with him set in the top of his Indian walking cane, which he bequeathed as a legacy to Richard, Bishop of Ely.

It was one object of the assise of mortdancester to ascertain whether the ancestor of the claimant had died seysed of the estate "in dominico suo ut de feodo." In Glanville's writ the words are, "in dominico suo sicut "de feodo suo." These terms are of feudal origin, but Bracton instances a variety of interpretations which may be given to the word "demesne," and concludes by saying that the term "demesne" in the writ may be applied to every kind of freehold, of which an ancestor died seysed as of fee, and from which if he had been ejected during his lifetime he might have recovered it by an assise of novel disseysine. So also with regard to the phrase "as of fee," Bracton explains it to signify anything, whether it be a tenement or a rent, which a person holds from any cause for himself and his heirs. Another and no less important object of this assise was to ascertain whether the claimant was the next heir (hæres propinquior), and here the principle of primogeniture is recognised as giving to the *antenatus* an exclusive preference to the inheritance over the *postnatus*. The

law of England in this matter had probably undergone a considerable change since the Conquest, although it may be open to doubt whether there was any uniform rule of succession to land in England in Anglo-Saxon times. According to the ancient British law during the Roman occupation, which was still maintained as law in Wales in the reign of Edward I., the land was divisible amongst all the sons of a deceased freeholder, and this rule of succession was upheld even in England after the Conquest in those counties, in which the custom of *gavelkind* prevailed. Lord Hale is of opinion that the laws of Edward the Confessor justify the view that the land of a deceased freeholder before the Conquest was divisible amongst all his children, male and female, if he died intestate, and that the law of primogeniture was not established in all its completeness by William the Conqueror, but grew np gradually, and was in fact not fully recognised until the reign of Henry II. In support of this view Lord Hale cites the compilation known as the "Leges Henrici Primi," in which the eldest born son is declared to be entitled to the principal estate of his father, but not to all his land. The *custumal*, however, which passes by the name of the Laws of Henry I., is of a later date than the reign of that king, and it contains numerous vestiges of ancient English jurisprudence, which are traceable to Anglo-Saxon times. Lord Hale may therefore be said, pace tanti viri, to have been rash in relying on this *custumal* as evidence of the state of the law in the reign of Henry I., for the limited right of primogeniture to which he refers may have been a tradition of Anglo-Saxon times, inasmuch as it is incontrovertible that the succession to land held by military tenure in Anglo-Saxon times was subject to a different law of inheritance from land held by a tenure other than military. For instance Glanville, whose authority on such a subject cannot be impugned, says: "When a per-
" son having an inheritable estate dies, if he has only a

" single son and heir, it is indistinguishably true that
" such son succeeds to the entire estate of the father.
" If he leaves more sons than one, then a distinction is
" made whether the father was a knight (miles), in other
" words holding by a military fee or a free sockman (soke-
" mannus) because if he was a knight, in other words
" holding by a military fee, then according to the law of
" the realm of England (Angliæ) the first born son suc-
" ceeds his father in the entirety, so that none of his
" brothers can claim of right a part thereof; but if he
" be a free sockman then indeed the inheritance is
" divided amongst all the sons, how many soever they
" may be, in equal parts, if it be a sockage and was
" divided of olden time, saving, however, the chief man-
" sion to the first born son in consideration of his rank
" of eldership (æsneciæ suæ) on such condition however
" that he shall satisfy the others up to its value. But if
" it has not been divided of olden time, then the eldest
" born, according to the custom of some, shall obtain the
" entire inheritance, but according to the custom of
" others the youngest son is the heir." (Lib. VII. Cap. 3).
The controversy amongst learned men whether tenures were common amongst the Anglo-Saxons, or were introduced by William the Conqueror, would thus appear to resolve itself into a question of *mode*, or a question of *degree*, if any weight is to be given to Glanville's statement in the above passage, and as the principle involved in the military tenure of the Anglo-Saxons was the defence of the kingdom, the rudiments of a system were already in existence when the Conqueror arrived in England, upon which he had no difficulty in engrafting many of the peculiar features of the feudal system; but I am disposed to think that the feudalism of England was at all times superficial, and that as the crust of feudalism wore away from its intrinsic thinness, the substance of the earlier Anglo-Saxon institutions came once more to the surface, and that it is to the solidity of

those institutions that we are indebted for the continuity of England's legal and political life.

Further it may be said that the policy of the King's Courts in Bracton's time was to strengthen the right of primogeniture by importing into the English order of succession the right of representation. Glanville informs us (VII. Cap. 3. §. 8.) that before his time there used to be great doubts in cases where a person died leaving a grandson, who was the son of a deceased elder son, together with a younger son surviving him, whether the grandson or the younger son, the nephew in fact or the uncle, had a preferable claim to the inheritance of their common ancestor. Glanville himself inclined to the grandson's claim, except where the elder son before his death had been provided for by the father and had left his father's home *ita dico, si pater suus non fuerit ab avo suo forisfamiliatus*, but in Bracton's time the theory of the law was well settled in favour of the grandson, although the courts were precluded from giving effect to it under particular circumstances, *propter casum regis* (f. 267. b). He elsewhere says (f. 327. b.) that where the courts had decided in favour of the grandson, and his uncle was in possession, they could not proceed to judgment "quamdiu casus regis duraverit." This is one of the references, which enable us to form a reasonable conjecture as to the time when Bracton wrote certain of his treatises. He refers to the *Casus regis* in three distinct treatises, one of them being the treatise De assisa mortis antecessoris, the second being the treatise De consanguinitate (f. 282), and the third being the treatise De Ingressu (f. 327).

The king who is alluded to in the phrase "Casus regis" was King John, who had successfully maintained in England his title to succeed to his father's throne on the death of his brother Richard I., in preference to Prince Arthur, who was the son and representative of the deceased Prince Geoffrey, the elder brother of King John. Prince Arthur on the other hand endeavoured to

maintain on the Continent by force of arms his title to Anjou and Maine, but he was taken prisoner by his uncle in 1203, and was generally believed to have been put to death by his order. Philip, King of France, at all events believed in the crime of murder, and summoned John as his vassal to appear before him on a charge of murder made against him by the barons of Brittany. John was contumacious, so Philip determined to enforce against him the sentence of his court, and war thereupon ensued, the result of which was that the whole of Normandy, Maine, Anjou, and Touraine, were wrested from the English crown, and henceforth became provinces of the kingdom of France. Meanwhile the Princess Eleanor, the sister of Prince Arthur, had been kept a state prisoner during the whole of King John's reign, and her imprisonment was prolonged during the reign of Henry III. down to the time of her death, which took place in 1241. After her death, as both titles centred in King Henry III., the *casus regis* may be said to have come to an end as far as the King's title to the throne could be in any way affected by the courts of Westminster judicially recognising the right of representation in the succession of descendants from a common stock. The allusion which Bracton makes to the *casus regis* in the three treatises above-mentioned, as being a bar to the effective action of the courts, raises a presumption that the treatises were composed before the death of the Princess Eleanor. Some slight support is given to this presumption by the circumstance, that in none of the three treatises is any judgment of the king's justiciaries cited by Bracton, which is of a date so late as 1241. On the other hand it deserves remark that Bracton has made no allusion to the *casus regis* in his treatise "De acquirendo rerum dominio," (f. 64 b.) in which he treats of the right of representation, where he says without any qualification that, if the younger born brother has put himself into seysine of the ancestral inheritance in anticipation of the grandson, the latter

may proceed by a writ of consanguinity or by a writ of right against his uncle. This is one of the anomalies to which I have made allusion in the introduction to the first volume, which seems to warrant us in supposing that Bracton's work was not written *uno tenore*, and that some of the treatises which make up the fourth book were composed at an earlier period than his second book. Another explanation may be suggested, that his treatise "De acquirendo rerum dominio, if it was of an earlier date, was the substance of readings delivered by him as Professor of Law in the University of Oxford, whilst the treatises which are grouped together in his fourth book were composed by him after he had become initiated in the practical working of the King's Courts.

It has been observed by Glanville, that the assise of mortdancester was not applicable to lands held in burgage tenure, in other words that the elder-born son in the case of burgage lands was not entitled to succeed invariably to the estate of his father. This exception, according to Glanville, was founded on a constitution enacted from considerations of public interest. Bracton, on the other hand, considers this exception to the general law to rest on the custom of certain cities, boroughs, and vills, more especially with reference to lands which had been purchased, as distinguished from lands which had been inherited. It seems to have been a general custom in boroughs, that burghers might bequeath at their discretion lands which they had purchased, equally as chattels, a confirmation of which custom will be found in the Domesday of Ipswich, originally drawn up in the reign of King John, and which has been published in the Appendix to the Black Book of the Admiralty, Rolls Series, Vol. II, p. 71. The Domesday of Ipswich says, that it was used in the said town of Ipswich that all those who had tenements and rents in the said town of their separate purchases in fee, might devise them freely by will to whomsoever they would. Bracton says it was the singular privilege of the barons of the City of Lon-

don, and of the burgesses of the City of Oxford that they were empowered to bequeath to whom they pleased not merely lands acquired by purchase, but lands acquired by inheritance, precisely as if they were chattels, and therefore he says that in such cities no assise of mortdancester would lie. I have endeavoured to ascertain whether there is any record preserved of this ancient custom in the archives of the City of Oxford, but the Town Clerk of Oxford has courteously informed me that the archives contain no record on the subject. There are however ample records in existence elsewhere, which show that the burgesses of Oxford enjoyed the same customs, franchises, and laws as the citizens of London. Thus we have the text of a charter granted to the burgesses of Oxford by King Henry III., in the thirteenth year of his reign under the hand of Ralph Neville, Bishop of Chichester, his Chancellor, which provides that the burghers of Oxford shall freely enjoy all their customs, franchises, and laws which they have in common with our citizens of London, and that they shall not be impleaded outside the borough of Oxford, and shall in all pleas derayne themselves according to the laws and customs of the citizens of London, " quia ipsi " et cives Londoniarum sunt de una et eadem consue- " tudine, lege et libertate." This charter is printed in the Liber Custumarum of the City of London, Rolls edition, part 11, p. 671, being copied from a portion of the City Records, which found their way into the British Museum with the Cotton M.S.S., and constitute the contents of M.S. Claudius D. 11, f. 131 a. But I am obliged to the Town Clerk of Oxford for having called my attention to the Charter of Inspeximus, which Queen Elizabeth granted to the citizens of Oxford in the seventh year of her reign, which recites a previous charter of Henry II., which is almost in the same words as the charter of Henry III., and ends by confirming to the citizens of Oxford the customs, franchises, and laws enjoyed by them under that charter "et sicut cives mei Londin-

"enses eas habuerunt." Further this charter of H. II. purports to confirm all the franchises, &c. granted to the citizens of Oxford by Henry I., his grandfather, in whose reign there is mention of a mayor of Oxford,[1] in a Charter of Donation to St. Bartholomew's Hospital, cited by Sir John Peshall.

The question how the cause was to proceed in an assise of mordancester, where the tenant has vouched the king as a warrantor, is discussed by Bracton in the eleventh section of his seventh chapter (p. 180), and he grounds his opinion, that thereupon judgment must be deferred until the will of the king is known, upon a judgment of Martin de Pateshull in 12 H. III. He had laid down the same rule as applicable to proceedings in an assise of novel disseysine, in fol. 172, for which he cites no precedent, but in treating of the case of such an assise falling into a perambulation he rests the same rule, where the disseysine has been made by the bailiff of the king, upon a judgment in a York Iter of 8 and 9 Henry III. (fol. 212). It is apparent from these passages that the treatise on the assise of novel disseysine as well as that on the assise of mortdancester must have been written some time prior to the treatise "De "warrantia," as Bracton in that treatise, fol. 382 b., cites a provision made on this subject at the dedication of the Abbey Church of Hales by the king in the presence of nine bishops and before Earl Richard and many other earls, whereby a tenant was forbidden to vouch the king as a warrantor, except in cases where the king was bound to make compensation (ad escambium).[2]

[1] The charters of the City of Oxford, with the exception of that of King Henry III., have been collected in Anthony Wood's Ancient and Present State of the City of Oxford, with additions by the Rev. Sir John Peshall, Bart. London, 1773.

[2] Mr. Finlason, in his edition of Reeve's History, vol. i. p. 424, calls attention to this provision, and justly observes that it was an act of the legislature, and one of those many Acts of Parliament which are now lost.

Bracton has omitted to give the date of this provision, which worked an important alteration in the general law, but we are able to fix the date of it, as Matthew Paris has recorded the dedication of the Abbey Church of Hayles, in Gloucestershire, as having taken place on the nones of November, A.D. 1251. Earl Richard was the patron of the church, which he had founded in pursuance of a vow, if he should escape shipwreck, and the king and queen and all the magnates of England were present on the occasion (Hist. Angl., Rolls Edition, Vol. III., p. 115).

Several instances of the tenacity of local custom and of the respect which the king's justiciaries paid to them are cited by Bracton from time to time. One of the most remarkable of these customs was the exemption of tenements in the county of Kent, if held in gavelkind, from being forfeited in certain cases of felony. Bracton cites two judgments on this subject delivered by justiciaries for whom he had the greatest respect, namely, by William de Ralegh and by Martin de Pateshull (p. 299). In fact it would appear to have been a recognised principle of jurisprudence in the early years of the reign of Henry III. that local customs should be respected by the justiciaries itinerant, where the decision would otherwise be arbitrary on their part, for instance, in actions of waste against a dowager, or a guardian, or a termor, the question what ought to be adjudged waste had to be decided by the justiciaries according to the measure, constitution, and custom of the locality (patria), p. 607.

Bracton treats briefly in his treatise De morte antecessoris the question, how an heir was to proceed to prove the legitimacy of his father, if exception was made to his title to succeed to his grandfather's estate on the ground that his father was a bastard. Where bastardy was imputed to the heir himself an inquest was usually transmitted to the Court of Christianity (p. 129), if matrimony or espousals were altogether denied, but the trial of the marriage of a dead man was not to be transmitted to a

Court of Christianity, because the man was not alive to answer nor to except, but it might be inquired into by an assise held after the manner of a jury, if both parties consented to a jury. The subject, however, of the jurisdiction of the Court of Christianity in questions of bastardy will be more properly reserved for discussion in treating of the action of dower.

A treatise on the writ of cosinage follows next in order after the treatise on the assise of mortdancester. The latter assise was limited within very narrow degrees, to wit, such only as have already been specified in the writ of mortdancester. The writ of cosinage, on the other hand, equally with the writs of ael and of besael, were introduced in aid of such kindred as were beyond the range of the writ of mortdancester, and this writ, as Bracton says, was only concerning possession, and was devised in order to avoid the doubtful event of a proceeding by a writ of right concerning the property. This writ, precisely as the writ of mortdancester, did not apply to disputes between "privies in blood" (conjunctas personas), but to the claims of blood-cousins against strangers, and the term of the inquiry under it was limited, equally as in an assise of mortdancester, to the last return of King John from Ireland. Bracton in his fifth chapter mentions two other writs. A case might arise, where a person who was in seysine of an ancestor's tenement was debarred from the use of certain of its appurtenances, as, for instance, the heir in possession of his ancestor's tenement, or the rector in possession of his predecessor's church, might be debarred from the enjoyment of common of pasture appurtenant in one case to the tenement, in the other to the church. In either of such cases the party prejudiced was entitled by the beneficence of the prince to a writ, which would entitle him to submit his claim to a jury, without recourse to an assise. In the sixth chapter there are found the rudiments of a writ, the exercise of which was destined

in after times to be a subject of great abuse on the part of the ministers of the Crown, the writ of "*Quo war-*" *ranto.*" Bracton speaks of it as a writ drawn up from time to time to meet the particular case (breve formatum ad querelam), savouring partly of a writ of mortdancester, partly of a writ of novel disseysine, and which may be determined beyond the county without prejudice to the common liberty. Its object was to require the party in possession of any appurtenance of a tenement, of which another person was rightfully seysed of fee, to show cause why he should not give up such possession. It seems to have been a prerogative writ, and was already applied, at the time when Britton wrote, as an effective means of challenging the franchises claimed under wrongful pretexts by the lords of local courts (L. I., ch. xx., s. 3). But Bracton in his subsequent treatise De defaltis (fol. 372) intimates that this writ had already been harshly used by the Crown against the subject. Still it was useful in some cases to enable a claimant to shape his action so as to defeat the asserted title of the tenant, who had been constrained by the writ of Quo warranto to disclose in a preliminary proceeding the title on which he rested his tenancy.

The treatise next following after that which treats of a writ of Cosinage is Bracton's fifth treatise, which treats of an assise of "Utrum," in other words, of an assise of which the object is to determine "utrum tenementum " de quo agitur sit feodum tenentis, vel libera eleemosyna " pertinens ad ecclesiam alicujus rectoris." This definition of its object, when compared with Glanville's definition of the corresponding recognition in his time, marks a considerable advance in the process of disinfeudating church property, for Glanville describes it as a recognition to determine whether a tenement is an ecclesiastical fee or a lay fee (feodum ecclesiasticum vel laicum feodum). This assise had been originally granted by a constitution of King Henry II., and was in the time of Glanville

available both to the laity and the clergy. It appears to have been thought by Martin de Pateshull that this assise ought to be confined to the clergy, as so many other remedies were open to the laity, and this is one of the very few instances in which Bracton dissents from the opinion of the great judge, whose authority he so frequently cites, and who seems to have adhered to his opinion as late as the tenth year of Henry III. Bracton however held that motives of public policy, with a view to encourage a resort to other legal remedies than the duel and the Great Assise, counselled the revival of the ancient practice of allowing the laity equally with the clergy to have recourse to this assise. The purpose of this assise, which differed in one important respect from all other assises as it determined the right to a given tenement as well as the possession of it, was to enable the rectors of parochial churches to recover tenements or services by reason of tenements, which had been usurped by laymen, and on the other hand to enable laymen to rescue their lands from the grasp of the clergy. It was one of the provisions of the Constitutions of Clarendon (A.D. 1164) that all disputes as to the tenure of an estate being in frankalmoigne should be determined by a recognition of twelve loyal men under the direction of the chief justiciary of the king, and it would appear from the wording of the ninth article of those Constitutions that a layman equally with a clerk might have recourse to this assise. "Si calumnia emerserit "inter clericum et laicum, vel inter laicum et clericum, de "ullo tenemento quod clericus ad eleemosinam velit attrahere, laicus vero ad laicum feudum, recognitione "duodecim legalium hominum per capitalis Justiciæ regis "considerationem terminabitur, utrum tenementum "sit pertinens ad eleemosinam sive ad laicum feodum, "coram ipso Justitia regis." These Constitutions purport to be a codification of the usages of Henry I., but the language in which they are drawn up savours of a

more advanced jurisprudence, and there can be little doubt that they form part of a general scheme of administrative reform initiated by Henry II., and based upon a mature study of the debateable ground between the spiritual and the temporal powers, and upon a reasonable desire not to allow it to be any longer a professional battle-field.

The assize of Utrum was only available in the case of clergy for such rectors of parochial churches as had been instituted by bishops or other ordinaries, as parsons (personæ). A vicar was not entitled to an assise by himself, although it would appear that Martin de Pateshull had stretched a point to enable a vicar to be a joint plaintiff in such an assise. We learn from Bracton how certain churches came to be divided into medieties either by reason of two fees or by reason of two patrons, and under what circumstances their rectors might plead separately, or must plead conjointly. Bracton, in his third chapter, discusses the various other remedies to which a clerk equally with a layman is entitled, the single assise from which a clerk was debarred being an assise of mortdancester, to which however a layman would be entitled as plaintiff against a clerk. A clerk however was entitled to a writ of right equally as a layman, and if he had no warrantor, might defend himself by the duel, when no witness could speak from his own sight or hearing, provided however he had the permission of the ordinary and of the patron. It seems a little uncertain from Bracton's language, whether he means to include amongst clerks entitled to an assise of Utrum canons of prebendal churches, and abbots, priors, and others who have churches for their own uses, both of which classes of clergy he says may be called rectors. Britton, who seems to have had Bracton's text before him, speaks with no uncertain voice on this subject, "For the assise," he says (Lib. IV., ch. vii., §. 1), "may " well lie at the suit of either (clerk or layman) yet not

" of all clerks, but for such only as are parsons and rec-
" tors of parochial churches, instituted therein by bishops
" or other ordinaries, and also for canons in cathedral
" churches and abbots and priors, who have churches
" appropriated to their use, and are in the position of
" parsons."

The fourth chapter contains a paragraph, which enables us to fix the time after which Bracton must have completed his treatise on the Assisa Utrum. This paragraph is so intimately connected with the text, that it would be unreasonable to suggest that it may be a note, which has found its way into the text, like Petrus de Sabandia (f. 159). The presence of this latter case in Bracton's text has been one of the *cruces* in determining the period, within which Bracton must have completed his work, inasmuch as the case of Peter of Savoy is quoted as having occurred in 46 H. III. The paragraph however in the present chapter does not raise any difficulty, and it is of considerable historical interest. It occurs in the discussion of the question what constitutes perjury on the part of the jury, and Bracton upholds the principle that perjury is intentional false swearing. "There are some persons," he says, "who say on oath " what is false, but they do not perjure themselves, inas- " much as they do not lie or go against their intelligence, " since they believe the fact to be so according to their " conscience, although the thing is otherwise in fact." Bracton then proceeds to illustrate his statement by a case in point, "Ut si," he says, "quis interrogat, quis " fuit ad consilium London, et respondeat quis, quod " rex et comes Richardus (ut credit) licet aliter sit in " veritate, quod comes ibi non fuerit, talis non mentitur, " et licet juraverit quod ita sit (ut credit) perjuriam non " committit" (f. 288 b. 289). The reference of Bracton in this place is to the Council of London or the Parliament of London, as Matthew Paris terms it (Hist. Angl. Vol. III., p. 334), which had been summoned in the absence

of King Henry III. in Gascony, by the Queen and Richard Earl of Cornwall, the king's younger brother, as joint regents during the king's absence, to meet in the quinzaine of Easter, and according to the chronicler abovementioned the assembled magnates waited during three weeks in vain for the coming of Earl Richard. This Parliament, as already observed, is of great historical interest, for it was the first since the reign of King John, to which the knights of the shire were summoned; the writ of summons, which has been published by Canon Stubbs amongst his Select Charters, purporting to require the viscount to return two chosen knights from each county. (A.D. 1254). It is not very obvious why Bracton cites this Parliament of London in illustration of the principle of law, to which he applies it. Richard Earl of Cornwall was one of the most important political personages of this period. He had been the leader of the party of the barons against Simon de Montfort, who had married the king's sister, but after he had lost his first wife, who had been the link which closely connected him with the great barons of England, Earl Richard ceased to head their party against the Poictevin kinsmen of the king, and his subsequent marriage with the queen's sister, Cincia de Provence, drew him still further away from the cause, of which Simon de Montfort ultimately assumed the leadership. But Richard's prudent counsels saved Henry on more than one critical occasion. The reason why he failed to attend the Parliament of London, which was summoned to grant an aid to the king, then carrying on war in Gascony, was that he had not arrived from the Continent; but from Bracton's allusion to the misapprehension of persons on the subject of Earl Richard's absence from the council there seems to have been some prevailing uncertainty on the subject. Bracton had already introduced Earl Richard's name to his readers in the second book "De acquirendo rerum dominio," f. 47, in which he

cites as an instance of a conditional donation a donation to be completed by delivery, "si comes Ricardus effectus fuerit rex Alemannorum." The coronation of Earl Richard as king of the Romans happened in 1257, and it is on the strength of this illustration that Professor Güterbock is of opinion that Bracton's work must have been compiled before 1257.

The chapter in which the reference to the Council of London occurs is a chapter that treats of an attaint of the jurors, who have made a false oath in any of aforementioned assises (L. IV., ch. ix., § 2). An attaint of the jurors appears at this time to have been the normal mode of obtaining a new trial, by alleging that one or more of the jurors in the original assise had sworn falsely. The process, as explained by Bracton, of empannelling a jury of twenty-four knights to try the jury of twelve, whose oath was impeached as false, seems to have been elaborated since Glanville's time. Glanville, after treating of the great assise in his second book, observes in one of its concluding chapters (cap. 19), that a penalty for false swearing had been inserted in the royal institution of the great assise in cases where the jurors had been lawfully convicted, or had made a confession of their falsehood. It is generally supposed that Glanville intended his readers to understand that the penalties for perjury, the details of which he proceeds to set forth, were not invented then for the first time, but were applied by the king to the new proceedings under the great assise and Lord Coke in 2 Inst. 236, refers to Glanville's chapter as evidence, that an attaint for perjury would lie under the common law. It appears from Bracton's text, that whilst the law of attaint had been elaborated since Glanville's time in its application to the assises of novel desseysine, of last presentation, and of mortdancester, it had ceased to be applicable to the great assise. The reason for this exception as stated by him (fol. 290) is not very satisfactory, namely, because the claimant having the option of the duel or the great assise had of

his own free will betaken himself to the assise, and therefore would be disapproving of his own defence if he impeached the finding of the jurors in such an assise.

It may be observed that the form of the writ, which Bracton gives as proper to be used for summoning the twenty-four knights on such occasions, is the form which was in use before the statute of 21 Henry III. had altered the time of prescription, and further it appears that proceedings for the conviction of a jury of twelve might be held beyond the limits of the county, wherein the assise in question had been held, the restriction imposed by the Charter of Liberties as to certain assises not being held beyond the limits of the county, within which the cause of action has arisen, having no application to an attaint. "And if," says Bracton, "the "common liberty has a bearing upon this, that assises "ought not to be held beyond the county, it does not "follow that on that account juries are bound to be held "in the county, for an assise has one privilege and a "jury another" (fol. 297). Bracton enters minutely into details in explaining the proper course of proceeding in an attaint, which in his time seems to have been of substantial benefit to the party wronged by the finding of the first jury. It had, however, begun to lose this beneficial character even in the reign of Henry VI., and under the Stuarts it was little more than a proceeding for the punishment of the jurors, unattended with any redress to the injured party. Still the process of attaint was recognised in our law down to the statute of 6 G. IV. c 50, when it was finally abolished as being a mere sound and not even pretending to be a remedy.

The names of one or two justiciaries occur in this part of Bracton's treatise, whose identification gives rise to some difficulty. Simon de Ropelay and his associates are mentioned as holding an assise for the attaint of a jury in the county of Lincoln in the 21 Henry III. They are however not judges itinerant, as the case is

cited as amongst the pleas which follow the king. Simon de Poppelay is the reading in this place of several very trustworthy MSS., but S. de Ropelay is the reading which has been preferred in Tottell's printed book. Neither name appears in any record preserved in the Rolls Office. So also Tottell's text represents the king as hearing pleas at Woodstoke in the presence of Simon de Segrave, also in an assise of attaint, whereof a conviction had been previously taken at Windsor before Egelard de Cygony and his associates. No record of Simon de Segrave is found in the Rolls Office, and on examining some of the best MSS. the name is found written S. de Segrave, who is probably Stephen de Segrave, the last great justiciary of England, who succeeded Hubert de Burgh in that high office in 1232, and was dismissed in 1234. He was subsequently restored partially to the king's favour in 1237, when he was made justice of Chester, and he died in 1241. Engelardus de Cygony, on the other hand, is not mentioned in any catalogue of the judges of England. His name, however will be found in the roll of those present at Westminster at the court held in 18 Henry III. on the subject of antenuptial bastardy. This roll, as preserved in the Public Record Office, has been printed in Appendix III. to Vol. II. of the present work.

The action for dower is the subject of Bracton's sixth treatise, which is the concluding treatise of the present volume. The nature of dower, as distinguished from maritagium, has already been discussed by Bracton in the thirty-ninth chapter of his treatise "De acquirendo rerum dominio (Vol. II., p. 47), from which it will be seen that dower according to the law of England was not identical with the *dos* of the Roman law. The existence, however, of both species of dower, namely, a marriage portion given to the bride by her father or other relative on occasion of her marriage, and a gift made to her by her husband at the church door at the time of her espousals, is recognised by Glanville. "Dos," he says,

" duobis modis dicitur; dos enim vulgariter dicitur id, " quod aliquis liber homo dat sponsæ suæ ad ostium " ecclesiæ tempore desponsationis suæ" (Cap. VI., §. 1.) and in a subsequent chapter he says, "In alia autem accep- " tione accipitur dos secundum leges Romanas, secundum " quas proprie appellatur dos id, quod cum muliere datur " viro, quod vulgariter dicitur maritagium." (Cap. VII., §. 1). Both kinds of dower had been recognised as early as in the reign of Henry I., inasmuch as in the Charter of Liberties granted by that king, A.D. 1100, it is provided under the third article, "Et si mortuo viro uxor ejus reman- " serit, et sine liberis fuerit, dotem suam et marita- " tionem habebit, et eam non dabo marito nisi secun- " dum velle suum," Art 3. This article in fact is the inauguration of an improved *status* for the English widow, of which the successive stages are distinctly traceable in the seventh article of the Magna Charta of King John, and in the seventh article of the Second Charter of Henry III. Under the former of these charters it was provided, that the widow should be entitled to remain forty days in the house of her deceased husband (in domo mariti), within which period her dower was to be assigned to her; under the latter it was provided, that she should remain as above in the chief messuage of her husband, unless it should be a castle, in which case another house should be provided for her. Further, she was to have meanwhile reasonable estovers, and then came a further provision " Assignetur autem ei pro dote " sua tertia pars totius terræ mariti sui, quæ sua fuit in " vita sua, nisi de minori dotata fuerit ad ostium eccle- " siæ." It will be observed that by this latter provision the widow is declared to be entitled to the third part of her husband's estate which he possessed during his lifetime, unless dower had been assigned to her at the church door, but this provision of the charter of Henry III., which was not contained in the Great Charter of King John, does not appear to have had effect given to it according to the letter of it by the king's justiciaries in

the time of Bracton, as Bracton limits the wife's reasonable dower to the third part of the estate, which her husband possessed on the day of her espousals. Britton, on the other hand, whilst he adopts Bracton's definition of reasonable dower says, that it was allowable for the husband to establish dower not only of such tenements as he had on the day of his marriage, but also of such as he might acquire afterwards for himself and his heirs. (L. V. ch. ii., §. 4.) This proposition of law is quite reconcileable with Bracton's formal definition of reasonable dower, which he gives in Chapter XXXIX. of his treatise De acquirendo rerum dominio, and to which dower the wife was entitled, if her husband had neglected to appoint her dower before his death, and Bracton himself, equally with Britton, lays it down that dower might be appointed by the husband not only in lands and tenements which have been acquired by him, but even in lands and tenements to be acquired by him, if they have been acquired or have fallen in during his life (fol. 93). Nevertheless it would seem to have been established law, both when Bracton and when Britton wrote, that in the case of knight's fees and grand serjeanties reasonable dower did not extend beyond the third of the husband's estate, which he held in demesne as of fee on the day of the espousals, or which he afterwards acquired in fee, and that if the guardians should have assigned to the widow more than a third part whilst the heir was under age, the heir might have the assignment of the excess revoked by a writ of admeasurement of dower when he came of age. The capital question to determine in an action of dower was the right of the claimant to the *status* of legitimate wife, since the heir to the estate out of which a woman claimed dower might deny her title to claim as lawful widow, or otherwise two women might lay claim to the character of lawful widow of a deceased person, whose heir resisted their claim. In such a case the heir was not bound to answer to either of them, until it had been

settled in the Court of Christianity which of them ought to be declared to be the legitimate wife of the deceased. We have here an insight into the relations between the King's Court and the Ecclesiastical Court. Letters went in the name of the king to the bishop or other ordinary of the place, to whom, as Bracton says, the Pope had granted jurisdiction in matrimonial matters (f. 302 b.) for the lawfulness of a marriage was a spiritual question, whilst the local limits within which a bishop's jurisdiction might be exercised seem to have been settled by a consultation between Martin de Pateshull and Peter des Roches, then Bishop of Winchester. No date is given by Bracton to this consultation. Peter des Roches had been appointed Bishop of Winchester in 7 John; he was made Chancellor in 15 John, and Chief Justice in 16 John. Two years after the accession of Henry III. Peter des Roches, upon the death of William Marshal, Earl of Pembroke, became the guardian of the young king, notwithstanding the rivalry of Hubert de Burgh, the Chief Justice. He lost, however, the king's favour in 1227, and went abroad for three years, after which he returned and procured the disgrace of Hubert de Burgh, and once more acquired the chief direction of the king's counsels. As he did not return before A.D. 1230, when Martin de Pateshull, according to the popular account, was dead, the settlement of the local limits of a bishop's jurisdiction in a question of marriage, arising out of an exception on the part of an heir to the title of a woman to claim dower as the lawful widow of his ancestor, must have taken place in the early part of the reign of Henry III. It appears to have been at that time agreed, that the domicile of the heir within the diocese of a bishop was the proper criterion of the bishop's authority to cite the heir into his court, and to hear witnesses on behalf of the woman to prove her marriage, after which the bishop was to remit the result of the inquest to the king. No appeal to the Pope was allowed in such cases any more than in cases of bastardy. In the

first place because the inquest was committed only to the ordinary mentioned in the king's letters; in the second place because the lord the Pope, if an appeal to him were interposed, would indirectly decide a title to a lay fee, and thereby prejudice might be caused to the lord the King. Britton states the law in almost the same language which Bracton uses: "En ceo cas deit le ordinarie fere somoun-"dre le tenaunt qi mist avaunt la excepcioun, en quel lu "qe il soit demoraunt, qe il soit a certein jour et lu devaunt "ly a moustrer, si il voille ou sache dire encountre le "matrimoigne" (L. V., ch. vii., §. 4). There is some slight ambiguity in this passage, just as there is in Bracton's text "Qui ei rescripsit, quod in quacunque "dyocesi ille qui exceptionem opposuerit domicilium "habuerit, fiat ei talis denuntiatio per ordinarium," &c., (f. 302 b.), but the subsequent practice on the principle of "optimus interpres usus" may be appealed to as confirmatory of the view, that the proper ordinary to hold the inquest was the ordinary of the tenant's domicile. Divorce by reason of consanguinity or affinity put an end to all claim for dower, but as long as the validity of a marriage had not been impeached during the lifetime of the husband, the widow's claim to dower was sustainable.

The best evidence in favour of a widow's claim to dower was the production of a sufficient sect on her part to show that she was endowed at the door of the church; the next best evidence was an instrument of appointment, the faith of which might be proved by a comparison of signatures (signorum), or by witnesses, or by the country. This latter mode of endowment by an instrument seems to have first come into use in cases where a son endowed his wife at the church door out of the estate of his father, in which case the consent of the father was required, and no better evidence of such consent could well be supplied than by the signature of the father affixed to the instrument of appointment. Britton in his paraphrase of this passage. (L. V., cap. ix., §. 1,)

speaks of the comparison of seals (collacioun de seals) instead of the comparison of signatures (signorum). I have in the introduction to Vol. III., p. L. already stated that there is good reason to believe that in the reign of Henry III. "signum" had a meaning distinct from "sigillum," and that "signum" meant a mark, howsoever made by the hand on the instrument, whilst "sigillum" meant a mark impressed in wax. We have an instance so late as the year 1253, somewhere about the time when Bracton was composing his work, of the use of "signum" in the sentence of excommunication (37 H. III.) against the transgressors of the charters, which was published in the names of the Archbishop of Canterbury and thirteen English and Scotch bishops, and which concludes with these words, "In cujus rei "memoriam sempiternam nos signa nostra duximus "apponenda." This sentence is followed by a written instrument drawn up in the names of the king and certain of the great magnates of England, declaring their consent to the above declaration of excommunication, and protesting against any alteration in the words of the charters, and this instrument concludes thus, "In "cujus rei memoriam et in posterum veritatis testi-"monium tam dominus rex quam prædicti comites "ad instantiam aliorum magnatum et populi præsenti "scripto sigilla sua apposuerunt." (Red Book of the Exchequer, f. c. iiij. xx. iiij. formerly at Westminster, now in the Public Record Office.) An explanation of the differences observable in the manner of attesting the sentence of excommunication and the instrument of consent is readily supplied, if we may assume the fact that all the bishops or clerks could write their names, whereas the majority of the barons were unskilled in the use of the pen.

A more difficult case might arise than the determination of the preferable claim of one or the other of two women claiming dower respectively from the heir, as the lawful widow of his ancestor, namely the claim of a

woman to be the lawful widow of the ancestor, after another woman in respect of the same husband had recovered dower. The proceedings in such a case seem to have been settled upon a consultation between Martin de Pateshull and the Bishop of Worcester, which consultation is stated to have been made after the custom of the realm of England, when it was settled that reference should be made in such a case by the king to the court of the ordinary to decide which of the two women was the legitimate wife of the deceased. Bigamy seems to have been by no means unfrequent in Bracton's time, and a woman who had married an Englishman in France or in the Holy Land had little chance to establish her claim for dower against a woman, whom the same man had subsequently espoused in England, inasmuch as the latter would prevail, because the former could not prove her marriage.

Dower in respect of lands held in sockage was governed by other rules of law than those, which applied to lands held by military tenure. The customs of the cities and boroughs were also multiform; and those customs were respected by the king's justiciaries. Bracton gives instances of this practice by cases determined by Martin de Pateshull in respect of the local customs of the City of London and of the City of Lincoln, and it would seem from other instances cited by Bracton that the customs of counties, as for instance Lincoln and York, were upheld by the king's justiciaries, and more particularly the law of gavelkind in Kent, according to which a widow did not forfeit her dower by reason of the felony of her husband, although she was liable to forfeit it upon a second marriage, as was also the case with widows in the City of London and in many other cities and boroughs.

I have elsewhere observed that the condition of women partook of several ameliorations under the Plantagenet kings, an important instance of which is cited

by Bracton in the *Nova Constitutio*, that is the Statute of Merton of 20 H. III., under which a widow was entitled to damages for having been wrongfully kept out the enjoyment of her dower-lands by frivolous exceptions on the part of the heir (f. 312 b).

The provisions of the Statute of Merton in favour of widows were of still further extent, as they enlarged their power of bequest in respect of the growing crops on the dower lands.

The first article of the statute provided "that from "thenceforth all widows, who after the death of their "husbands may be ousted of their dowers, or may be "unable to have their dowers or their forty days with- "out plea, and who afterwards by plea may have re- "covered their dowers of the tenements, whereof their "husbands died seised, may recover, together with their "dowers, from those who may have been convicted of "unjust deforcement, their damages, notably the value "of the whole dower belonging to them from the time "of the death of their husbands down to the day on "which the widows themselves by the judgment of our "court may have recovered their seisin, and the de- "forcers themselves may nevertheless be in our mercy "as formerly they were wont."

The second article is as follows: "Also that all such "widows thenceforth may be able to bequeath their "growing crops on the land as well from their dower as "from their other free lands and tenements, saving the "services of lords, which are due from the dowers."

The action for dower (actio dotis) properly speaking lay in cases where the widow was kept out altogether of her enjoyment of her dower lands (unde nihil habet) but cases might arise where she was only kept out of the enjoyment of certain appurtenances of her dower lands. In such cases she was aided by a writ of right to dower (Breve de recto de dote), and it would appear that in Glanville's time such a writ, where the heir

denied what was alleged by the widow, led up to the duel, whereas in Bracton's time the heir was bound to produce a sect, if he had one, or to put himself upon the country. But Bracton says explicitly, "there shall not be between them a great assise or wager of battle" f. 313 b. The proceeding by writ of right of dower might be determined in the court of the warrantor, or in the county court before the viscount, or it was removable by either party into the King's Court, as in a plea of right by a great writ, and the latter proceeding was the more necessary in cases where the husband had lands in several counties, and the admeasurement could only take place by the order of the king's justiciaries.

The last question discussed by Bracton in this matter is the remedy for the heirs, where the dowager has committed waste on her dower lands by pulling down houses or taking unreasonable estovers. The common law entitled the widow to reasonable estovers, to burn, to build, or to fence, upon the lands which she held in dower, but nothing beyond. We have here an instance of an equitable jurisdiction, exercised by the king's justiciaries, which had come into practice since Glanville's time. Bracton, unfortunately, does not mention the names of the justiciaries who, in a case which occurred upon the Iter, in the county of Norfolk, in 9 H. III., by a resolution of the court authorised the heir to appoint a forester to protect the dower woods. Bracton sets out the form of writ used on the above occasion, when he was probably in attendance on the justiciaries. Bracton further remarks that the justiciaries had not an arbitrary power to adjudge waste, but that each county (patria) had its own measure, constitution, and custom. Bracton's treatment of the question of waste committed by a widow, in the above passage, as well as his subsequent notice of waste committed by a guardian, in neither of which cases does he make any reference to the provisions of the Statute of Marlbridge (52 H. III.), are justly

considered to raise a strong presumption that his work was completed before that statute was enacted (A.D. 1267). Further, Britton's mode of treating the question of waste committed by a dowager separates him from Bracton by a considerable interval of time. Britton, for instance, briefly states that, if the widow commits waste upon her dower land, the remedy provided by our statutes shall be preserved (Liv. V., ch. xiii., § 5). The statutes here referred to by Britton are without doubt the statutes of Marlbridge and the Statute of Westminster I. By the latter of these statutes, it was provided that a writ of waste might be sued out of Chancery against a person who held per legem Angliæ, and that such a writ should lie where any one held for life, or for a term of years, or in dower. Bracton's evidence goes to show, that in the case of a widow or of a guardian the common law gave a remedy, but Lord Coke disputes that fact in the case of a tenant for life or for years. The law of waste was undoubtedly made more severe by the Edwardian statute, which ordained that a person found guilty of waste should both lose the thing wasted and make compensation to treble the sum at which the waste was rated; whereas, in Bracton's time, justice was held to be satisfied in the case of dower-lands by the servitude imposed upon the widow of henceforth having her estovers delivered to her by the heir's forester, and in the case of a guardian, if he was convicted, by his loss of the custody of the land, and by his liability to pay to the king an amerciament in addition to restoring the damage, which he had caused to the lands under his charge.

The common law in Bracton's time, not merely authorised the imposition of a penalty for waste committed on dower lands, but it allowed a writ of prohibition to issue to the sheriff, that he should not allow the dowager to commit waste, and the sheriff having this writ might, according to Lord Coke, summon the *posse comitatus*,

and withstand the doing of any acts of waste ; but this writ ought to be sued out by the heir, in good time, lest through his own negligence he should incur damage, " quia melius est in tempore occurrere, quam post " causam vulneratum remedium quærere."

The Temple. 1881. T. T.

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HENRICI DE BRACTON

DE

LEGIBUS ET CONSUETUDINIBUS ANGLIÆ,

HENRICUS DE BRACTON

ON THE

LAWS AND CUSTOMS OF ENGLAND.

Q 1302. Wt. 2164. A

HENRICI DE BRACTON

DE

LEGIBUS ET CONSUETUDINIBUS ANGLIÆ,

TRACTATUS SECUNDUS LIBRI QUARTI:

IN QUO TRACTATUR DE ASSISA ULTIMÆ PRÆSENTATIONIS.[1]

Cap. I.

1\. Cui competat hujusmodi assisa. f. 237 b.

Dictum est supra qualiter subveniendum est ei, qui injustè & sine judicio disseysitus fuit de aliquo teñto vel de servitute aliqua quæ pertineat ad teñtum in fundo alieno, & quæ consistit in jure: Nunc autem dicendum est de pertinentiis quæ consistunt in jure & in proprio, sicut de seysina pręsentandi, ubi s. quis impeditus fuerit quo minùs uti possit seysina propria vel alicujus antecessoris sui. Cùm autem pręsentaverint ad aliquam ecclesiam vacantem, ad quam ipse vel antecessores sui pręsentaverint tempore pacis, cùm propriam seysinā habere debeat quis, vel antecessoris sui qui ultimò pręsentaverit, nisi ille qui īpedit vel deforceat docere possit certis ratiōibus quare nō debeat, q quidē decidi et determinari poterit p assisā ultimę pręsentationis utraq, parte vel altera tātū id in curia postulāte. Sed vidēdū est primò cui cōpetit hujus- f. 238.

[1] Hic incipit Secundus Tractatus Libri Quarti de Assisa Ultime Presentationis. M.S. Rawl. C. 160.

THE FOURTH BOOK

OF

HENRICUS DE BRACTON

ON THE

LAWS AND CUSTOMS OF ENGLAND.

THE SECOND TREATISE,

WHICH TREATS OF THE ASSISE OF LAST PRESENTATION.

Chapter I.

1
Who is entitled to an assise of this kind.

It has been above explained in what manner succour is to be afforded to him, who has been disseysed tortiously and without a judgment from any tenement or from any servitude in another's ground, which appertains to a tenement, and which consists in a right. We must now explain concerning the appurtenances, which consist in a right and in property as concerning the seysine of presenting, where, for instance, a person has been impeded from using his own seysine or the seysine of an ancestor. For when they have presented to a vacant church, to which he himself or his ancestors have presented in time of peace, when he ought to have his own seysine or that of his ancestor, who has last presented, unless he who impedes or deforces him can show by certain reasons wherefore he ought not, which indeed may be decided and determined by an assise of last presentation, each party or one of them only demanding that in court. But we must see first, who is entitled to

f. 237 b.

f. 238.

A 2

Britton, iv. ch. i. §§ 2 and 3. Fleta, 317.

modi assisa, quia non competit cuilibet de populo, nisi ei qui semel nomine ꝓprio presentaverit, ut heredes[1] nomine successionis, de seysina ꝓpria vel alicujus ātecessoris sui jure hereditario succedit, ad q ptinet advocatio. Et q dicit de uno, dici poterit de pluribus & contra plures, cùm sint quasi unus hæres: quia nullus sine participe vel cohærede assisam portare poterit vel respōdere, nō magis quā in aliis assisis. Et si plures participes p assisam recuperaverīt, nullus sine alio præsentabit, nec ratione æsnecie, nec majoritatis, nec pluralitatis: qa aut omnes coīunicant aut nullus. Aliis autē qui tenēt p feoffamentū & nō p descensum nunquā competit, antequā semel præsentaverint: qa de seysina eorū quorū heredes nō sunt petere non possunt p assisam, nō magis quā p breve de recto. Itē nec ei qui tenet ad vitā quocūq, modo & non p descensum, sicut nomine dotis vel ad terminū. Subvenit eis tamē alio modo ut infrà dicet.

2. Breve de assisa ultimæ presentationis.

Rex vic. salutē. Si talis fecerit te securum de clamore suo ꝓsequēdo, tunc sumoneas &c. xii. liberos & legales homines de visineto tali q sint corā justiciariis nostris ad ꝓximā assisam cū in partes illas venerint, vel apud Westminster immediatè, vel alibi tali die, parati sacramēto recognoscere quis advocatus tēpore pacis præsentavit ultimā psonā quæ mortua est ad ecclesiā de tali loco, quæ vacat (ut dicit) & cujus advocationē idē talis dicit ad se ptinere. Et interim ecclesiā illā videāt & nomina eorum imbreviari faciāt. Et sumoneas p bonos sumonitores talem, qui advocationē illā ei deforceat, q tunc sit ibi auditurus illā recognitionē, & habeas ibi sumonitores & hoc breve.

[1] "vel hæres," MS. Rawlinson, C. 159.

an assise of this kind, because it is not allowable to any one of the people, excepting to him who has once presented in his own name or as heir in the name of his succession, of his own seysine or who succeeds by right of inheritance to the seysine of his ancestor, to whom the right of advowson belongs. And what is said of one may be said of several, and against several, when they are as it were one heir, for no one without his parcener or coheir can bring an assise or reply to one, no more than in other assises. And if several parceners recover [the advowson] by an assise, none shall present without the others, neither by reason of seniority, nor of majority, nor of plurality, because they all communicate or none. But for others, who hold a tenement by feoffment and not by descent, it is never competent, before they have once presented, because they cannot claim by an assise the seysine of those, whose heirs they are not, no more than by a writ of right. Neither is it competent for him who holds for life in any way, and not by descent, as in the name of dower or for a term. They are aided, however, in another way, as will be explained below.

2. A writ concerning an assise of last presentation.

The king to the viscount greeting. If so-and-so has given you security to prosecute his claim, then summon &c. twelve free and loyal men of such a neighbourhood to be before our justiciaries at the next assise when they shall come into those parts, or at Westminster immediately, or elsewhere, on such a day, prepared to recognise on oath what advocate presented in time of peace the last parson who is dead to the church of such a place, which is vacant (as is said), and of which the said so-and-so says, that the advowson belongs to him. And in the mean while let them view that church and cause their names to be entered on the writ. And summon by good summoners such a person, who deforces him of that advowson, that he be there to hear the recognition, and have there the summoners and this writ.

Teste &c. Per hoc autē qd' dicit̃ deforc. videt̃ quibusdā q querens innuat p hoc q deforcians sit in seysina, sicut in brevi de recto, sed revera non est ita, sed satis deforceat qui possessorem uti seysina non pmiserit omninò vel min⁹ comōdè impediat præsentando, appellando, impetrando, secundùm q dicit̃, satis facit disseysinā, qui non permisit possessorē vel comōde, licet omninò non expellat.

3. De modo procedendi in hujusmodi placito.

Ad primum diem poterit uterq, se essoniare si voluerint, si autem ambo fecerint defaltā, vacuū erit placitū & cadit breve. Si autē impediens tantū præsens sit, p judiciū recedet sine die. Si autē querēs tantum præsens sit & impediēs nō, tūc vidēdū erit inprimis an impediēs sumonit⁹ sit vel nō. Si autē sumonit⁹ fuit & sumonitio testata p idoneos sumonitores, qui examinati testentur sumonitionē, tūc resumoneat̃ impediens. Si autē nō fuerit sumonit⁹ vel sumonitio testata vel fortè præsēs fuerit primo die & causat⁹ fuerit q nullā omninò habuit sumonitionē vel minus ratiōabilē sumonitionē habuerit, habeat aliū diē rationabilē. Testata igit̃ sumonitione vel nō dedicta ab aliquo resumoneat̃ p tale breve.

4. Si deforcians vel impediens ad primum diem summonitionis non venerit, qualiter sit resummonendus.

Rex vic. sal. Sumoneas p bonos sumonitores A. q sit corā justiciariis nr̄is apud talē locū auditurus recognitionem ultimæ præsentationis quàm B. in eadē curia nr̄a corā eisdē justiciariis nostris versus eum arramavit, qui advocatus est tēpore pacis &c. ut supra. Et ad ostēdendū quare nō fuit corā eisdē justiciariis nostris apud talē locū tali die sicut sumonitus fuit. Et habeas

Witness &c. But from the circumstance that the word "deforces" is used, it seems to some that the plaintiff intimates that the deforcer is in seysine, as in a writ of right, but in truth this is not so, but he satisfies the word "deforces," who shall not permit the possessor to use his seysine at all, or to his inconvenience impedes him by presenting, by appealing, by suing out a writ, according to what is said that a person sufficiently causes a disseysine, who does not allow a person to use his seysine at all or not conveniently, although he does not altogether expel him.

3. Of the mode of proceeding in a plea of this kind.

On the first day each party may essoin himself, if he wishes, but if both parties make default, the plea will be vacated and the writ falls. But if the disturber only be present, he shall retire without a day by a judgment. But if the plaintiff alone be present, and the dirturber not, then it is to be seen in the first place whether the disturber has received a summons or not. But if he has been summoned, and the summons is attested by fitting summoners, who having been examined testify to the summons, then let the disturber be resummoned. But if he has not been summoned or the summons has not been attested, or by chance he was present on the first day, and has alleged as an excuse that he has not had any summons at all, or not a reasonable summons, let him have another reasonable day. The summons therefore having been attested, or not gainsayed by any person, let him be resummoned by such a writ.

4. If the deforcer or disturber has not come on the first day of the summons, how he is to be resummoned.

The king to the viscount greeting. Summon by good summoners A. that he be before our justiciaries at such a place to hear a recognition of last presentation, which B. in the said court before our said justiciaries has instituted against him, who is the advocate in time of peace &c. as above. And to show cause why he was not before our said justiciaries at such a place on such a day, as he was summoned. And have there the summoners and this

ibi sumōn[1] & hoc breve. Ad quem diē si venerit, causari nō poterit sumōn[2] quin ꝑcedat assisa, sive testet prima sumōn sive secūda sive nulla, cū diē habuerit rationabilē & sciverit se esse sumōn vel scire debuit. Si autem omninò non venerit, tunc capiatur assisa per defaltā si juratores præsentes fuerint, & sic terminetur negotium. Si autem præsentes non fuerint, tunc præcipiatur vic. quòd habeat corpora eorum ad alium diem. Ad quem diem sive venerint sive non, ante omnia capiatur assisa, cùm tantum operatur ejus absentia quàm præsentia, cùm nihil dicere possit in odium defaltæ quare assisa remaneat, nisi fortè ad certificandum juratores, si chartā habeant vel aliquid tale intervenerit.

f. 238 b.

5. Breve quod vicecomes venire faciat juratam.

Rex vic. salutem. Præcipimus tibi quòd venire facias &c. A. B. C., vel q habeas &c. corpora A. B. C. recognitorum assisæ ultimæ præsentationis, quæ summonita est in curia &c. coram justiciariis &c. inter A. querentem & B. impedientem de advocatione ecclesiæ de M. & ad ostendendum quare non fuerunt &c. ad talem diem & locum sicut summoniti fuerunt, & si ulteriùs defaltam fecerint tunc in fine brevis ita dicatur, & ad audiendum judicium suum de pluribus defaltis. Dicatur etiam in fine brevis (si opus fuerit) & tot & tales tam milites quàm alios liberos, legales & discretos homines de ꝓximo vicineto in assisam illam ponas, & illos habeas coram præfatis justiciariis nostris ad præfatum diem, ad faciendam illam recognitionem simul cum juratoribus priùs electis, & q interim illam ecclesiam viderint, & ita q assisa illa non remaneat pro defectu recognitorum. Vel sic: & aliter. Et loco talium

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[1] "summonitores," MS. Rawl. C. 160.

[2] "summonitio," *id.*

writ. On which day if he has come, the party summoned may not allege any cause why the assise should not proceed, whether he calls in evidence the first summons or the second summons or none at all, since he has had a reasonable day, and knew that he had been summoned or ought to have known it. But if he has not come at all, then let the assise be held by default, if the jurors shall be present, and so let the business be terminated. But if they shall not be present, then let a precept issue to the viscount, that he have their bodies there on another day. At which day whether they have come or not, let the assise be held before all things, since his absence works the same effect as his presence, since he can say nothing in hatred of the default wherefore the assise should be stayed, except by chance to certify the jurors, if they have a charter, or something of the kind has intervened.

f. 238 b.

5. A writ that the viscount cause a jury to come.

The king to the viscount greeting. We enjoin you that you cause to come, &c. A., B., C., or that you have &c. the bodies of A., B., and C., as recognisors of an assise of last presentation which has been summoned in court, &c. before the justiciaries, &c. between A. as plaintiff, and B. impeding him in the advowson of the church of M., and to show cause why they were not, &c. on a certain day and at a certain place as they were summoned, and if they shall make further default, then in the end of the writ let it be so said, and to hear judgment against them for several defaults. Let it also be said at the end of the writ, if it be requisite, and place so many and such, as well knights as other free, loyal, and discreet persons of the nearest neighbourhood, on that assise, and have them present before our aforesaid justiciaries on the aforesaid day, to make that recognition together with the jurors already elected, and that meanwhile they should view that church, so that the assise shall not be stayed from failure of the recognisors. Or thus: and otherwise. And in the place of such as

qui de assisa amoventur, eo q sunt certa ratione suspecti, vel quia sunt homines vel parentes talis, vel alio modo inutiles vel essoniabiles, vel loco talium qui mortui sunt, ponas tot & tales legales & discretos milites alios cùm priùs electis, & tales &c. ut supra. Et summoneas per bonos summonitores talem, si fortè absens fuerit eo die, q sit coram &c. ad audiendum assisam illam, & ad ostendendum quare non fuit &c. & talis summonitio fit ex abundanti. Et habeas ibi summoñ & hoc breve &c. T. &c. Et licet ultima clausula habeat locum in omnibus assisis quæ capiendæ sunt per defaltam, sicut assisa mortis antecessoris &c. & aliæ, si ad primum diem se essoniaverint & diem habuerint per essoñ suum, & ad quem non apparuerint, capiatur assisa per defaltam statim, non jacebit resummonitio. Item si comparuerint & juratores non, semper habebit unicum essoñ quotiens in curia cōparuerit, & diem habuerit.

6. De essoniis et resummonitionibus et hujusmodi placitis. Britton, iv. ch. i. § 4. Fleta, 318.

Ex præmissis satis apparet quando & quoties jacet resum̃onitio, & quotiens assisa capitur extra com̃ vel coram iiij. justiciariis ad hoc assignatis: sed coram justiciariis itinerantibus in com̃ ad omnia placita non habet locū resum̃onitio nec xv. dierum diffusa dilatio, ubi tenens in assisa mortis antecessoris vel impediens & deforcians, ut hic manentes sint & etiam res de qua agitur in eodem com̃ tempore itinerationis, non magis quàm contra minorem, sed statim capiatur assisa post primā defaltā sicut assisa novæ disseysinæ. Et q nulla debet fieri resum̃onitio in itinere justiciariorum in prædicto casu cùm partes præsentes sint in com̃, & res

are removed from the assise, on the ground that they are suspected for a certain reason, or that they are the liege men or relations of such an one, or in some other way are unavailable or essoniable, or in the place of such as are dead, place so many and such other loyal and discreet knights with those previously elected, and such, &c. as above. And summon by good summoners such an one, if by chance he should be absent on that day, that he be present, &c. to hear that assise and to show cause wherefore he was not there, &c., and such a summons is made to be more sure. And have there, &c. the summoners and this writ, &c. And although the last clause has a place in all assises, which are to be held by default, as the assise of the death of an ancestor and others, if on the first day they have essoined themselves and had a day (assigned to them) through their essoin, and upon which day they have not appeared, let the assise be forthwith held by default immediately, no resummons shall take place. Likewise if they have appeared and the jurors have failed to appear, he shall always have a single essoin as often as he shall appear in court and had a day assigned to him.

6. Of essoins and resummonses and pleas of this kind.

From the premises it is apparent when and how often a resummons lies, and how often an assise is held outside the county or before four justiciaries assigned thereto: but before the justices itinerant going into the county to hear all pleas a resummons has no place, nor a diffuse delay of fifteen days, where the tenant in an assise of the death of an ancestor or the disturber and deforcer as here are stationary, and also the thing itself which is at stake, in the same county at the time of the circuit, no more than against a minor, but let the assise be held after the first default, as an assise of novel disseysine. And that no resummons ought to take place on the circuit of the justiciaries in the aforesaid case, when the parties are present in the county and the thing which is at stake, may be seen in the Iter of

de qua agit, videri poterit in itinere M. de Pateshul de ultimo itinere suo in com̄ Sussex. anno regni regis H. 10. Assisa mortis antecessoris, si Adam de N. Et q contra illum qui est infrà ætatē non jacet resum̄onitio, ꝓbatur in ultimo itinere M. de P. eodē tempore in com̄ Sussèx. Assisa mortis antecessoris, si Thom̄ de Colvile. Item eadem ratione nec jacet contra minorem, cùm tantum operetur tenētis absentia quàm præsentia. Item propter contumaciam non jacet resummonitio, ut si tenens vel impediens ad diem summonitionis comparuerit & cōtumaciter recesserit, postquam visus fuerit à justiciariis in curia qui recordū habeant, statim capiatur assisa sine resummonitione, ut de eodem itinere ipsius M. & eodem tempore in com̄ Norff. Assisa mortis antecessoris, si Bartholomeus de Waterdene. Itē in qualibet assisa præter assisam novæ disseysinæ primò die jacet esson̄ vel resummonitio, sed ad alium diem post esson̄ non jacebit resummonitio nec e contrariò esson̄ post resummonitionem, sed statim per defaltā capiatur assisa (secundùm quosdā) sed tamē jacet assisa de servitio domini regis post esson̄ & post resummonitionem in qualibet assisa, ubi utrumq; jacuerit, præterquam in assisa ultimæ præsentationis, dum tamen warantum ad diem suum habuerit. Et quòd esson̄ de servitio domini regis, post essonium de malo veniendi locum habere non debeat, sed quòd statim capietur assisa post primum esson̄ per defaltam: inveniri poterit de termino sancti M. anno regis H. qui nunc est secundo. Item quòd in itinere aliquando jacet esson̄ & post esson̄ resummonitio & iterum post resummonitionem esson̄, ut de servitio domini regis: dum tamen essoniatus warantum habeat breve domini regis, præter assisam novæ disseysinæ &

f. 239.

Britton, iv. ch. i. § 4.

Britton, vi. ch. viii.

Martin de Pateshull in his last Iter in the county of Sussex, in the tenth year of the reign of king Henry, in an assise of the death of an ancestor, if Adam de N. And that a resummons does not lie against him who is under age is proved in the last Iter of Martin de Pateshull, at the same time in the county of Sussex, in an assise of the death of an ancestor, if Thomas de Colvile. Likewise in the same way it does not lie against a minor, since the absence of the tenant has the same effect as his presence. Likewise a resummons does not lie on account of contumacy, as if the tenant or the disturber shall have appeared on the day of the summons and contumaciously departs after he has been seen by the justiciaries in court who have a record, let the assise be held forthwith without a resummons, as in the same Iter of the said Martin and at the same time in the county of Norfolk, in an assise of the death of an ancestor, if Bartholomew of Waterdene. Likewise in every assise, except an assise of novel disseysine, on the first day an essoin or resummons lies, but no resummons lies for another day after an essoin, nor on the contrary does any essoin lie after a resummons, but the assise shall be held forthwith by default (according to some), but nevertheless an assise lies concerning the king's service after an essoin and after a resummons in any assise where either would have lain, except in an assise of last presentation, provided however he have a warrantor upon his day. And that an essoin on the king's service ought not to have place after an essoin on a hindrance by the way, but that the assise should be forthwith held after the first essoin by default, may be found in Michaelmas term in the second year of the king, who now is. Likewise that on the circuit sometimes an essoin lies, and after an essoin a resummons, and again after a resummons an essoin, as on the king's service, provided the party essoined has a warrant [in] a writ of the lord the king, except in an assise of novel

f. 239.

ultimæ præsentationis, quæ excipitur ex certa causa & necessitate in omnibus assisis: probatur in ultimo itinere M. de P. in com̃ Suff. Assisa mortis antecessoris, si Radulphus de Wadleyham, et hoc bene potuit esse hac ratione, quia tenẽs fortè manẽs fuit extra com̃ & in servitio domini regis. Contrarium tamen inveniri poterit in com̃ Kanc. de itinere M. de P. anno regis H. 11. incipiente 12. de termino S. M. quòd in itinere nulla jacet resummonitio. Item si semel summonitus fuit & post essoñ vel resummoñ comparuit & warantũ vocaverit, vel diem habuerit, & ad diem datum non comparuerit, nulla ibi resum̃onitio sed statim capiatur assisa ꝑ defaltã, & infrà pleniủs dicet̃ de warantis non cadendis[1] in assisa mortis antecessoris. Et quæ hîc dicta sunt de resum̃onitionibus infradict̃[2] sufficiant de omnibus assisis. Itẽ ꝗ in assisa ultimæ præsentationis post summonitionem & resummonitionem jacet essoñ de malo veniendi, habuit summonitus diem ꝑ essoñ suum, ꝗa allocatum fuit ei essoñ suum, & tunc venit alius à latere & dixit ꝗ præsentatio non ꝑtinuit ad sum̃onitum sed ad ipsum, ut de termino S. T. anno regis H. 2. Assisa ultimæ præsentationis inter Wilh. Buk. & priorem S. N. Exoñ de ecclesia de Cheyley in com̃ Somerset. Si autem post sum̃onitiones & resum̃onitiones & essonia non venerit deforcians, vel cùm venerit respondere noluerit vel contumaciter recesserit, capiatur assisa versus eum per defaltam, quia absentia ejus habetur pro præsentia, quia si alius ei daretur dies, in odium defaltæ recluderetur ei via dicendi cõ-

Britton, iv. ch. i. § 4.

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[1] "de warantis vocandis." MSS. Rawl. C. 160 & 159.

[2] "infra dicta." MSS. eadem.

disseysine and of last presentation, which is excepted for a certain cause and necessity in all assises, is proved in the last Iter of Martin de Pateshull, in the county of Suffolk, in an assise of the death of an ancestor, if Ralph of Wadleyham, and this could well be for this reason, because the tenant was by chance remaining out of the county and in the service of the lord the king. The contrary, however, may be found in the county of Kent, in the Iter of Martin de Pateshull, in the eleventh and twelfth year of king Henry in St. Michael's term, that in the Iter no resummons lies. Likewise if he has once been summoned, and after an essoin or resummons he has appeared and vouched a warrantor, or has had a day, and on the given day has not appeared, there is no resummons in that case, but let the assise be held at once by default, and below it will be further discussed concerning warrantors being called in an assise of the death of an ancestor. And what is here said of resummonses may suffice as if below said concerning all assises. Likewise because in an assise of last presentation after the summons and the resummons an essoin lies of hindrance in coming, the party summoned has had a day through his essoin, because his essoin has been allowed to him, and then there has come a collateral party, and he has said that the presentation does not appertain to the party summoned but to himself, as in Holy Trinity term in the second year of king Henry, in an assise of last presentation between William Buk. and the prior S. N. of Exeter, concerning the church of Cheyley in the county of Somerset. But if after the summonses and resummonses and essoins the deforcer has not appeared, or when he has appeared he has refused to answer or has contumaciously departed, let the assise be held against him by default, because his absence is taken to be [the same] as his presence, because if another were given to him, in hatred of his default he would be barred of the way of speaking

tra assisam quare remaneret. Item cùm præsens sit & concedit assisam simpliciter, vel si aliquid dicat contra assisam, nisi dicat quare remaneat assisa, ꝑcedat assisa hoc modo si juratores præsentes fuerint: si autem non, dabit̃ partibus alius dies, ad quem possunt partes se essoñ si voluerint ut priùs, & habebunt alium diem ad quem procedet assisa, vel per defaltam, vel alio modo, nec poterit deforciās vocare warantum, cùm assisa generaliter faciat pro quolibet qui jus habet præsentandi.

f. 239 b.

7. De sacramento juratorum in assisa ultimæ præsentationis.

Cùm autem juratores præsentes fuerint, nec sit aliquid quod excipi poterit contra illos ut supra, jurare debent hoc modo. Hoc auditis justiciarii, quòd veritatem dicam de assisa ista de ecclesia vel capella, unde visum feci per præceptum domini regis, & pro nihilo omittā &c. ut supra. Et omnes alii juratores jurabunt ut supra.

8. De veredicto juratorum.

Cùm autem juraverint, audire debent formam brevis, & justiciarii debent eos instruere quantum ei licitum fuerit, & prædicere eis quòd sibi provideant de veritate dicenda propter absentiam deforciantis, qui si præsens esset possit eos in multis certificare. Habito igitur inter eos juratores tractatu & deliberatione cùm venerint coram justiciariis ad veritatem dicendam, dicere poterunt per sacramentum suum, quòd talis querens præsentavit ultimam personam quæ mortua est ad prædictam ecclesiam & tempore pacis, s. talem nomine, qui ultimò obiit persona in eadem ecclesia, & admissus fuit ad præsentationem suam, vel dicere possunt contrarium, quòd talis talem non præsentavit nec

against the assise why it should be stayed. Likewise when he is present and concedes the assise simply, or if he states anything against the assise, unless he can state wherefore the assise should be stayed, let the assise proceed in this manner if the jurors are present; but if they are not present, let another day be given to the parties, at which the parties may essoin themselves if they wish as before, and they shall have another day at which the assise shall proceed either by default or in another way, nor shall the deforcer be allowed to vouch a warrantor, since the assise generally makes for him whoever has the right of presenting.

f. 239 b.

7. Of the oath of the jurors in an assise of last presentation.

But when the jurors shall be present and there is nothing which can be excepted against them as above, they ought to swear in this manner: Ye hear this, justiciaries, that I will speak the truth concerning this assise about the church or chapel, of which I have made a view according to the precept of the lord the king, and for nothing will I omit, &c. as above. And all the other jurors shall swear as above.

8. Of the verdict of the jurors.

But when they have taken the oath, they ought to hear the form of the writ, and the justiciaries ought to instruct them how much was allowable to him, and warn them that they should take care to speak the truth on account of the absence of the deforciant, who if he were present could certify them on many matters. After, therefore, the said jurors have discussed and deliberated amongst themselves, when they have come before the justiciaries to declare the truth, they will be able to say upon their oath that so-and-so, the plaintiff, presented the last parson who is dead to the aforesaid church and in time of peace, to wit, so-and-so by name, who was the last who died parson in that church, and was admitted to his presentation, or they may say the contrary, that so-and-so did not present such a person nor any other, but another person presented him, &c.

alium, sed alius illum præsentavit &c. Item dicere possunt omnes rationes quare præsentatio pertineret ad querentem, quas quidem ille deforcians proponere possit si præsens esset & ostendere quare injustè non deforciaret, ut si post præsentationem illam, de qua agitur, ille querens vel antecessor suus qui præsentavit post præsentationem illam advocationem illā dederit per se, vel tenementum illud ad quod pertinet advocatio dederit cum omnibus pertinētiis suis sine aliqua retentione in feodo, vel donec providerit, ad vitam vel ad terminum, secundùm quod infrà dicetur pleniùs. Item non sufficit dicere juratoribus quòd talis vel antecessor suus justè præsentavit, nisi doceant q deforcians injustè præsentationem illam deforciavit. Item non sufficit[1] quòd justè, nisi doceant quòd deforcians injustè præsentationem illam deforciaverit. Item non sufficit, quòd injustè, nisi doceant juratores quòd ei deforciata sit qui queritur, ad hoc quòd aliquid capiat per assisam, licet aliis hoc prodesse possit qui jus habent, quia omnes articuli in brevi contenti possunt esse veri. Sed tamen inquirere oportet utrum deforcians justè deforciaverit vel injustè, & similiter si ad querentem pertineat querela. Item dicere possunt q nihil sciverint omninò quis illum præsentavit, qui ultimò obiit persona. Et si nullo modo aliquid certum dicere sciant de eo, tunc de necessitate recurrendum erit ad seysinam alterius personæ ante eum, ut aliqua certitudo habeatur de præsentatione & de persona præsentati. Et si de tali adhuc certitudo haberi non possit, adhuc recurratur ad superiores quatenus cursus temporis hoc pmittit, quoad assisam, & cùm ulteriùs procedi non possit, tunc deinde recurratur ad proprietatem & ad breve de recto, ut per hoc terminetur

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[1] "Item non sufficit" down to "deforciaverit," omitted. MSS. Rawl. C. 160 & 159.

Likewise they may state all the reasons why the presentation belongs to the plaintiff, which the said deforcer could propose if he were present, and show why he did not unjustly deforce him, as if after the presentation which is at issue, the plaintiff or his ancestor who presented after that presentation gave the advowson by itself, or gave the tenement to which the advowson belongs with all its appurtenances without any retention in fee, or until provision had been made, for life or for a term, according to what will be said more fully below. Likewise it is not sufficient to say to the jurors that the said person or his ancestor rightfully presented, unless they show that the deforcer has wrongfully deforced the presentation. Likewise it is not sufficient to say "rightfully," unless they show that the deforcer has wrongfully deforced that presentation. Likewise it is not sufficient to say "wrongfully," unless he can show to the jurors that he who complains has been deforced, so that he may take any thing by the assise, although this may profit others who have the right, because all the articles contained in the writ may be true. But it is incumbent to inquire whether the deforcer has rightfully or wrongfully deforced, and in like manner if the complaint belongs to the plaintiff. Likewise they may say that they know nothing at all as to who presented him, who was the last who died parson. And if they cannot in any manner say anything certain concerning him, then of necessity they must have recourse to the seysine of the other parson who was before him, that some certainty may be had concerning the presentation and the parson who was presented. And if no certainty can be arrived at respecting such parson, recourse must be had to former ones, as far as the course of time will allow this, regards the assise, and when further proceedings cannot be had, then at last recourse must be had to the property and to a writ of right, that by this

proprietas & assisa. Item si juratores dubitaverint ad proprietatem,[1] utrum talis vel antecessor suus præsentaverit an alius talis vel quis, querens per hoc nihil consequitur, quasi deficiente probatione sua, quia quotienscunq, dubitatur an quid sit, perinde est ac si non esset illud. Item erit[2] etsi personam querentis omninò ignoraverint, vel si cognoverint personam ejus, nesciunt tamē si unquam præsentaverit, vel nesciunt, licet personam ejus cognoverint, si sit filius & hæres illius qui ultimò præsentavit, & cujus seysinam petit, & perinde scire non possunt si ad ipsum pertineat actio vel querela, iis autem intellectis de facili perpendi poterit pro quo judicabitur per assisam.

f. 240.

Cap. II.

1. Cum utraque pars comparuerit in judicio, proponat querens intentionem suam. Britton, iv. ch. ii. § 1. Fleta, 390.

Cum autem uterq, præsens fuerit, querens & deforcians, & deforcians dicere velit contra assisam, oportet primò quòd querens audito brevi suo profundet intentionem suam hoc modo, & doceat quòd ad eum pertineat actio. Certa itaq, debet esse intentio & narratio, & certum fundamentum, & certa res quæ deducitur in judicium & vera probatio pro petente vel querente, vel ad minus præsumptio, cui semper standum erit, donec tenens vel deforcians excipiendo & exceptionem probando docuerit contrarium. Ille autem qui per hanc assisam ad fundandam intentionem suam, docere debet de cujus seysina profert assisam, utrum de ppria seysina qualitercunq, teneat in feodo, vel ad vitam, vel ad terminum, rē corporalem ad quē ptineat advocatio, vel

[1] "ad proprietatem," omitted. MS. Rawl. C 160.

[2] "illud idem erit." MS. Rawl. C. 159.

means the property and the assise may be determined. Likewise if the jurors have doubted as to the property, whether such a person or his ancestor presented or some one else, the plaintiff gains nothing by this, his proof as it were failing, because as often as it is doubted whether a thing be so, it is the same as if it were not. Likewise it will be so, if they are altogether ignorant of the person of the plaintiff, or if they have known him personally, and are nevertheless ignorant whether he has presented or not, or are ignorant, although they may know him personally, if he is the son and heir of him who last presented, and whose seysine he claims, and accordingly cannot know if the action or the plaint appertains to him, but if these things are ascertained it will be easy to determine for whom judgment will go by the assise.

f. 240.

Chapter II.

1. When each party has appeared in court, let the plaintiff propound his declaration.

But when each is present, the plaintiff and the deforcer, and the deforcer wishes to speak against the assise, it is incumbent in the first place that the plaintiff after his writ has been heard should found his statement in this manner, and show that the action appertains to him. His statement and declaration ought to be certain, and the foundation certain, and the thing which is brought under judgment certain, and the proof for the claimant or plaintiff true, or at least the presumption, which is always to be maintained, until the tenant or the deforcer by excepting and proving his exception has shown the contrary. But he who proceeds by this assise to found his statement ought to show of whose seysine he brings the assise, whether of his own seysine in whatever way he may hold in fee or for life or for a term of years the corporeal thing to which the advow-

ad ipsam advocationē,[1] s. jus advocationis sine re vel corpore, cui adhæreat. Item si de seysina alicujus antecessoris, oportet illū docere se esse hæredem illius antecesoris cujus petit seysinam separatim & p se sine aliis, vel cum aliis in comuni absq, separatione, ubi plures sunt quasi unus hæres, oportet q omnes nominētur, vel in comuni & separatim,[2] & successivè: in quo casu, sufficit si ille querat ad quem ptineat præsentatio ea vice, vel si jus præsentandi de seysina unius antecessoris pluribus descendat capitibus sed quasi uni hæredi, & facta divisione inter cohæredes hæreditatis, remaneat tota advocatio & præsentatio uni cohæredi. Item designare oportet quæ vel qualis persona ultimò obiit persona, & de qua morte, sive obierit de morte naturali sive civili: & ita facta examinatione, & sic fundata intentione, de facili perpēdi poterit utrum præsentatio & actio ptineat ad querentem separatim per se simpliciter vel in communi, vel etiam in communi cū aliis sed vicissim & successivè.

Cap. III.

1. De responsione et exceptionibus de forma contra querentem secundum articulos brevis.

Cum autem querens intentionē suā sic fundaverit, & docuerit q ad ipsū ptineat præsentatio, & pducat pbationem, s. assisam, oportet q deforciās excipiat contra intentionē, quare assisa debeat remanere. Sunt quidem plures exceptiones, quarum quædam dilatoriæ & quædam pemptoriæ: & pemptoriarum quædam sunt pemptoriæ jurisdictionis & quædam brevis, sed sunt dilatoriæ judicii & non tangūt ipsam actionem nec intentionem

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[1] "vel ipsam advocationem." MS. Rawl. C. 159.

[2] "vel separatim." MS. id.

son belongs, or the advowson itself, that is the right of advowson without a thing or body, to which the advowson adheres. Likewise if of the seysine of any ancestor, it is incumbent that he should show that he is the heir of that ancestor, whose seysine he claims separately and by himself without others, or with others in common without separation, where several are as it were one heir, it is incumbent that all be named either in common and separately and successively, in which case it is sufficient, if he claims to whom the presentation pertains for that term, or if the right of presentation from the seysine of one ancestor descends to many heads, but as it were to one heir, and a division having been made of the inheritance amongst the coheirs, the entire advowson and presentation remains with one coheir. Likewise he ought to designate what and what sort of parson died the last parson thereof, and by what death, whether he died by a natural or by a civil death, and upon an examination having been so made, and the statement [of claim] having been so founded, it may easily be determined whether the presentation and the action appertains to the plaintiff separately by himself simply or in common, or also in common with others, but in turn and successively.

Chapter III.

1. Of the answer and exceptions of form against the plaintiff according to the articles of the writ.

But when the plaintiff has thus founded his declaration, and shown that the presentation belongs to him, and produces his proof, to wit, the assise, it is incumbent that the deforcer except against the declaration why the assise should be stayed. There are indeed several exceptions, of which some are dilatory and some peremptory, and of the peremptory exceptions some are against the jurisdiction and some against the writ, but they are dilatory of the judgment and they do not touch the action itself nor the declaration any more than other

non magis q aliæ dilatoriæ, & sunt primò & in principio proponēdæ, secundùm q inferius dicetur de exceptionibus, & superiùs dictum est in parte, de quibus superfluū esset hîc repetere, sicut de brevi & psonis: dum tamen exceptiones quæ generales non sunt, quæ tantum tangūt assisam istam & non alias ppter plures articulos in brevi contentos, de quibus p ordinem est pcedendum. Cōtinetur etiam in brevi (quis advocatus). Advocatus autem dici poterit ille ad quem ptinet jus advocationis alicujus ut ad ecclesiā præsentet nomine proprio & non alieno, & dicitur (quis advocatus) ad differentiā illorum q̃ præsentant nomine alieno, qualis est custos ratione custodiæ. Custos autē non est advocatus, sed ille cujus nomine præsentant.[1] Item dicitur (quis advocatus) ad differentiam eorum quodam̄odo qui tenent ad firmam ad terminū annorū. Item ad differentiam eorum qui tenent ad terminum vitæ quacunq; ratione, vel qui tenent p intrusionem vel disseysinam, qui nunquam præsentaverint in vita sua nec tempore quo fuerint in seysina. Cùm autem semel præsentaverint & ita sint in seysina præsentandi, sunt quasi advocati, quoad seysinā præsentandi quamdiu vixerint & fuerint in possessione rei ad quam ptinuerit rei advocatio: cùm non poterit quis priùs præsentare vel habere ptinentias, antequam habuerit corpus q sequuntur ptinentiæ. Est igitur verus advocatus ad quem ptinet pprietas & seysina ex nomine pprio sibi & heredibus suis & non alieno, ut prædictū est. Item quasi advocatus & non verus, qui creditur esse advocatus & non sit, tantum ppter seysinam præsentandi, & tenementum quod possident, licet in seysina sint nomine proprio & non alieno, & sic poterit quis

f. 240 b. Britton, iv. ch. iii. § 2.

[1] "præsentat," MS. Rawl. C. 160.

dilatory exceptions, and they are to be propounded in the first place and at the commencement, according to what will be said below concerning exceptions, and has been said above in part, concerning which it would be superfluous to repeat here, as concerning the writ and the persons, provided they are exceptions which are not general, which touch only that assise and not others, on account of several articles contained in the writ, concerning which proceedings must be in order. There is contained likewise in the writ [the words] "who is the "advocate." But he may be called the advocate, to whom pertains the right of any advowson that he should present to the church in his own name and not in another's, and he is called the advocate in distinction from those who present in another's name, such as a guardian by reason of guardianship. But a guardian is not an advocate, but he in whose name they present. Likewise a person is called an advocate in distinction from those who hold for a term of years. Likewise in distinction from those who hold for the term of their life for whatever reason, or who hold by intrusion or by disseysine, who have never presented in their lifetime, nor during the time when they have been in seysine. But when they have once presented and are thus in seysine of presenting, they are as it were advocates as regards the seysine of presenting as long as they live and are in possession of the thing to which the advowson of the thing appertains, since a person cannot present or have the appurtenances, before he has the substance which the appurtenances follow. He is therefore the true advocate, to whom the seysine and the property belongs in his own name for himself and his heirs, and not in another's name, as aforesaid. Likewise he is as it were an advocate, but not a true one, who is believed to be an advocate and is not so, only on account of the seysine of presenting and the tenement which they possess, although they may be in seysine in their own name and not in another's, and so a person may be a true advocate

f. 240 b.

esse advocatus verus imperpetuum vel non verus sed ad tempus. Sed cùm tales semel presentaverint, & illi ad quos rē transtulerint semel presentaverint & moriātur vel possidere desierint, qualiter subvenitur ꝑprietario si ecclesiam vacare cōtigerit, satis ex premissis trahi poterit ad exemplum. Et quod dictum est de illis qui possident nomine proprio, dici poterit de illis qui possident nomine ecclesiæ sue. Item (tempore pacis) ꝗ dicitur ad differentiam eorū qui[1] fiunt tempore belli, ꝗ idem est quod tēpore guerrino, ꝗ nihil differt à tempore juris & injurie. Est enim tempus injurie, cùm fuerint oppressiones violentæ, quibus resisti non potest, & disseysine injuste. Sed omne tempus possit esse tempus guerrinum, et possit esse tempus pacificum, non autem simpliciter, sed ad quosdam & non ad omnes, uti enim quidam possunt jure suo tam tempore belli sive guerrino, quàm tempore pacis, ut si cùm uti velint[2] jus uno tempore vel alio violenter vel injuriosè non impediatur, & tunc erit tempus pacis in utroq, tempore. Et si e contrariò, tunc erit tempus belli in utroq, tempus enim pacis videri poterit & designari hoc modo, poterit enim quis ante guerram generalē pacificè presentare sine aliqua contradictione. Et eodem modo poterit tempore guerræ. Itē post guerram eodem modo, & quælibet istarum præsentationū sufficiens erit quantum ad seysinam presentationis & bona, quia nulla istarum dici poterit injuriosa vel violenta. Et vice versa quocunq, tempore adhibeatur violentia, talis seysina dici poterit injuriosa, & ideò quasi nulla: cùm tempore belli et non pacis sit acquisita, & sic uno & eodem tempore poterit esset[3] tempus pacificum & guerrinum

Britton, iv. ch. iii. § 3.

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[1] "quæ," MS. Rawl. C. 160.
[2] "velit," id.
[3] "esse," id.

in perpetuity or not a true one, but only for a time. But when such have once presented, and those to whom they have transferred the property have once presented and died or ceased to possess, in what way aid is afforded to the proprietor, if it should happen that the church becomes vacant, may be sufficiently deduced from the premises by way of example. And what has been said concerning those who possess in their own name, may also be said concerning those who possess in the name of their church. Likewise (in time of peace) which is said in distinction from those things which are done in time of war, which is the same as in a warlike time, which differs in no respect from a time of right and of wrong. For it is a time of wrong when there are violent oppressions, against which resistance is not possible, and wrongful disseysines. But every time may be a warlike time, and may be a pacific time, not however simply, but relatively to certain persons and not to all, for some may use their right as well in time of war or in warlike time, as in time of peace, as if, when they wish to use their right at one time or another they are not impeded violently or wrongfully, and then it will be a time of peace during each time. And if on the con trary, then it will be a time of war in each time, for a time of peace may be seen and designated in this manner, for a person will be able before a general war to present peaceably without any contradiction. And he may be able in the same manner in time of war. Likewise after the war in the same manner, and any of those presentations will be sufficient as regards the seysine of the presentation, and will be good, because none of them can be called wrongful or violent. And vice versâ at whatever time violence may be applied, such a seysine may be called wrongful, and accordingly as it were null, since it has been acquired in the time of war and not of peace, and so at one and the same time there may be to certain persons a peaceable and a warlike

quibusdam, sic et quibusdam non, quamvis guerra dicat generalis. Et etiam tempore guerrino sicut tempore pacis possunt fieri donationes & contractus de voluntate dantis & accipientis sicut tempore pacis. Et vice versa, eodem modo tempore pacis fieri possunt oppres- siones injustæ, rapinæ, disseysinæ injuriosæ sub specie pacis, sicut tempore guerrino. Et ideò ex iis quæ fiunt quolibet tempore, judicari debet utrumq; tempus, scilicet qualiter sit quibusdam pacificum, & quibusdam guerrinum, ut ex hoc detur exceptio deforcianti, vel non detur. Item (præsentavit &c.). Refert igitur utrum talis persona præsentata admissa fuerit ad præsentationem talis vel non, quia non sufficit præsentare personam, nisi ad præsentationem admissa fuerit præsentata: quia cùm duo fuerint à diversis præsentati, oportet quòd unus admittatur, & alius recusetur. Poterit etiam esse quòd nullus eorum admittatur, licet unus præsentantium jus habeat præsentandi, cùm propter lapsum temporis de constitutione Lateranensi, si partes fuerint discordes ultra sex menses, tamen [1] propter minorem ætatem, ut si contra minorem præsentantem prolatæ fuerint chartæ antecessorum, ad quas minor ante ætatem respondere non possit. Et quo casu, pertinebit ad ordinarium collocatio, nisi partes consenserint de una persona idonea præsentanda, salvo jure cujuslibet cùm minor ad ætatem pervenerit & reservata quadam minima pensione usq; ad ætatem ut salvum sit jus presentandi ei qui per assisam obtinuerit, & ut illam tunc conferat cui voluerit. Item duo possunt præsentare simul, & quorum unus jus habebit & alius non, vel uterq; aliquam scintillam juris, si in

f. 241.

Britton, iv. ch. iii. § 4.

Concil. Lateran. aº 1179.

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[1] "tum," MS. Rawl. C. 160.

time, and in like manner to others not, although there may be a general war. And likewise in time of war as in time of peace there may be donations and contracts with the willingness of the giver and of the receiver, as in time of peace. And vice versâ in the same manner in time of peace there may be wrongful oppressions, rapine, wrongful disseysines under the appearance of peace, as in time of war, and therefore from the circumstances of each time, each time ought to be judged, to wit, in what manner it may be peaceful to some, and warlike to some, that thereupon an exception may be granted or not against the party employing force. Likewise (he presented, &c.). It matters, therefore, whether such a person, who has been presented, was admitted at the presentation of so-and-so, for it is not sufficient to present a person, unless upon the presentation the person presented has been admitted; because when two persons have been presented by different persons, it is incumbent that one be admitted and the other rejected. Because it may happen that neither of them is admitted, although one of the presenting parties has the right of presenting, as well on account of the lapse of time according to the Lateran Constitution, if the parties are discordant beyond six months, as on account of the minority (of the advocate), as if the charters of ancestors have been produced against a minor presenting, to which a minor cannot make answer before he has come of age. And in which case it will appertain to the ordinary to collate a person there, unless the parties agree to present a fit person, saving the right of each party, when the minor has come of age, and reserving a certain very small payment until he comes of age, that the right of presenting may be saved to him who has obtained it by an assise, and that he may then confer it upon whom he will. Likewise two persons may present at the same time, and of whom one will have right and the other not, or each will have some

f. 241.

clericum consentiant sine aliqua discussione juris, non erit standum juratoribus in tali presentatione, cùm sit incerta, sed ad seysinam illius advocati de quo haberi possit certitudo, & qui de jure sibi competente, licet cum contentione vel sine, ultimo præsentavit. Item esto quòd quis sine contradictione semel præsentavit, & alius vacante iterum ecclesia impedimentum opponat, & deinde assensum præbeat præsentationi ejus qui priùs presentavit: non tamen propter hoc, scilicet talem assensum, mutatur status præsentantis vel minuitur, cùm iterum ecclesiam vacare contigerit, quia aliud est assentire & aliud consentire. Assentire enim potest quis per se cùm jus non habeat præsentandi nec sibi aliquid retinet tacitè vel expressè, licet dicat, salvo jure meo imposterum. Sed si sit aliquis in possessione presentandi, & assensum ei qui proprietatem habuit vel consensum præsentandi simpliciter & sine alia protestatione, sibi præjudicat imperpetuum, & hoc potiùs dici debet consensus quàm assensus, cùm ille qui jus habet possessionis consentit cum eo qui habet proprietatem. Si autem hoc fecerit cum tali protestatione, ut si dicat, consentio præsentationi tuæ, salvo jure meo imposterum, per hoc retinet sibi totum jus quod habuit, tam super possessione, quàm super proprietate. Est enim jus possessionis & jus proprietatis, & idem erit & melius si exprimat jus utrumq, & dicat salvo mihi jure meo imposterum, tam super possessione, quàm super proprietate. Et de hac materia inveniri poterit in itinere in comitatu Kanc. anno regis Henrici tricesimo secundo incipiente tricesimo tertio in quindena s. M. Assisa ultimæ præsentationis capta inter W.

Britton, *ib.* § 5.

spark of right, if they agree upon a clerk without any discussion of their right, the jurors cannot rely on such a presentation, since it is uncertain, but upon the seysine of that advocate concerning whom certitude may be had, and who last presented upon his own right, although with or without a contention. Likewise let it be that a person has presented once without any contradiction, and another person on the church being again vacant opposes an impediment, and then gives his assent to the presentation of him who before presented, the status of the presentor is not on that account, to wit, on account of such assent, changed or impaired, when it shall have happened that the church is again vacant, because it is one thing to assent, and another thing to consent. For a person may assent by himself when he has no right of presenting, nor does he retain anything for himself tacitly or expressly, although he may say, "saving my right for the future." But if any person be in the possession of the presentation and gives his assent to him who has the property, or his consent to his presenting simply and without any other protest, he prejudices himself for ever, and this may be called consent rather than assent, since he who has the right of possession consents with him, who has the property. But if he shall have done this with such a kind of protest, as if he should say, "I consent to your presentation, saving my right for the future," he thereby retains for himself all the right, which he had, as well upon the possession as upon the property. For there is the right of possession and the right of property, and it will be the same and better, if he expresses both rights, and should say, "saving to myself my right for the future, as well upon the possession as upon the property." And on this matter there will be found in the iter in the county of Kent, in the thirty-second and thirty-third year of king Henry in the quinzaine of St. Mary, an assise of last presentation held between William Bard.

Bard. & hæredem de Meanton de ecclesia de Suterlege in com̃ Norff. Item continetur in brevi (persona quæ mortua est) personam dicit ad differentiam vicarii, quia de morte vicarii vel de vicaria non jacebit assisa. Item non jacebit assisa de ecclesiis probendatis generaliter, nisi fortè firmarius intervenerit ab initio in p̃bendatione, si p̃bendata fuerit in absentia alicujus, dum fuerit agens in partibus remotis, vel infrà ætatem, vel in custodia, secundùm quod inveniri poterit in rotulo de placitis quæ sequuntur regem anno xvi. Item non jacebit de aliqua capella, quæ mero jure subjecta fuerit & pertinens ad aliam jurisdictionem matricis ecclesiæ, nisi sit ita quòd querens contendat illam esse matricem ecclesiam, vel si capella gaudeat aliquo speciali privilegio, ut si sit capella domini regis, quæ nulli subjecta est ecclesiæ nec ad aliquam pertinet, sed ecclesia poterit esse pertinens ad capellā talem; ptinere autem poterit capella ad matricem ecclesiam, ut prædictum est, vel tantum esse pensionariam & aliquid dare in signum subjectionis, & de hujusmodi capella non competit assisa advocationis matricis ecclesiæ versus eum qui habet advocationem capellæ, sed ei competit contra omnes cùm diversi sint advocati, advocatus ecclesiæ & advocatus capellæ, secus tamen erit si utraq; unum habuerit advocatum. Item non jacebit assisa de ecclesia vel capella ubi nulla constructa est, licet aliquando fuerint & nunc ceciderint, quamvis adhuc locus sacer maneat. Item dicitur (quæ mortua est) hoc est sive morte naturali sive civili. Civili ut si se transtulerit ad religionem, vel resignaverit, vel si fecerit quod tantundem valet, ut si

f. 241 b.

Britton, *ib.* § 5.

and the heir of Meanton concerning the church of Suterlege in the county of Norfolk. Likewise there is contained in the writ, "the parson who is dead;" it speaks of a parson as distinguished from a vicar, for an assise will not lie concerning the death of a vicar or concerning a vicarage. Likewise an assise will not lie concerning churches which have been constituted "prebends" generally, unless by chance a lessee (of the tithes) has intervened from the commencement at the constitution of the prebend, if it has been constituted a prebend in the absence of any one, whilst he was active in remote parts, or was under age, or in wardship, according to what may be found in the Rolls of the Pleas which follow the king in his sixteenth year. Likewise it shall not lie concerning any chapel, which of mere right is subject to and appurtenant to another jurisdiction of a mother church, or if the chapel enjoys any special privilege, as if it be a chapel of our lord the king, which is subject to no church nor appertains to any one, but a church may be appurtenant to such a chapel; a chapel may likewise be appurtenant to the mother church, as aforesaid, or may be only a pensioner and pay something as a sign of subjection, and concerning a chapel of this kind the advocate of the mother church is not entitled to an assise against him who has the advowson of the chapel, but the latter is entitled against all, since the advocates are different, the advocate of the church and the advocate of the chapel; it will be otherwise, however, if both have had one advocate. Likewise an assise will not lie concerning a church or chapel where none has been constructed, although they may have once existed and have now fallen down, although the site still remains sacred. Likewise it is said, "who is dead," that is, either by a natural death or by a civil death. By a civil death, as if he has transferred himself to a religious order, or has resigned, or if he has done what is equivalent, as if he has married a

f. 241 b.

uxorem duxerit, vel aliquid fecerit propter quod ecclesiam retinere non possit. Item (ad talem ecclesiam quæ vacat ut dicitur) & ideò videndum quæ vacat & quæ non, ut si omninò vacet vel personatus tantum in quo casu procedet assisa ac si omninò vacaret. Si autem aliquid inde præstetur pro bono pacis vel nomine simplicis beneficii, & ille qui hoc perceperit moriatur, propter hoc non vacat personatus nec ecclesia. Et illud idem dici poterit de vicario, qui si moriatur totum hoc accrescit personæ, quia vicaria consolidari debet cum ꝑprietate sive personatu, & hoc dico, nisi taxata fuerit[1] per ordinarios ad rationabilem sustentationem vicarii. Item refert utrum tota ecclesia vacaverit vel aliqua pars ecclesiæ, ut si assisa proferatur de tota ecclesia non vacet[2] nisi medietas vel tertia pars vel quarta. Et si de advocatione contentio habeatur utrum vacet vel non, super hoc erit ordinarius consulendus, episcopus vel alius qui super hoc habeat cognitionem, quia laicus de hoc cognoscere non potest, non magis quàm de matrimonio contracto vel soluto. Et quòd ad episcopum pertineat cognitio, videri poterit de termino s. T. anno regis H. 4. in com̄ Wygorn̄ de ecclesia de Eldersen de R. de Bragel. ꝗ aliunde non expedit quidem, quia ecclesia fortè incumbrata est per episcopum, vel archidiaconum, vel alium ordinarium, vel fortè episcopus admittit clericum ad pręsentationem alicujus, qui jus non habet in præsentatione, in præjudicium veri patroni, in quibus casibus non expedit mandare episcopis, quia de facili non rescribent veritatem, ut possint tueri factum proprium, & ideò melius est (ut videt̄) si dubitetur utrum vacet an non, ꝗ in hoc dubio procedet assisa, & mādetur episcopo ꝗ ad-

Britton, iv. ch. iii. § 5. Fleta, 122, § 9.

[1] Fleta, 122, § 9 has the reading "et hoc ubi taxata fuerit," and Britton accords with Fleta. "Ubi taxata fuerit" is also the reading of MS. Rawl. C. 160.

[2] "et non vacet." MS. Rawl. C. 159.

wife or done something, wherefore he cannot retain the church. Likewise " to such a church, which is vacant as it " is said," and accordingly it is to be seen which is vacant, and which not, as if it be altogether vacant or only the parsonage, in which case the assise will proceed as if it were altogether vacant. But if any payment be made therefrom for the good of peace or in the name of a simple benefice, and he who has receeived it dies, neither the parsonage nor the church is thereupon vacant. And the same thing may be said concerning a vicar, who if he dies, the whole accrues to the parson, because the vicarage ought to be consolidated with the property or the parsonage, and this I say unless it has been taxed by the ordinaries for the reasonable support of a vicar. Likewise it matters whether the whole church has been vacant, or some part of the church, as if an assise is brought concerning the whole church and only a mediety or a third part or a fourth part is vacant. And if a contention be had concerning the advowson, whether it is vacant or not, the ordinary will have to be consulted thereon, the bishop or another, who may hold cognisance thereof, because a layman cannot hold cognisance thereof, any more than of a marriage contracted or dissolved. And that the cognisance belongs to the bishop may be seen from the term of Holy Trinity in the fourth year of king Henry, in the county of Worcester, concerning the church of Eldersen, concerning R. de Bragel., that for other reasons it is not expedient, because the church is perhaps encumbered by the bishop or by the archdeacon, or by some other ordinary, or by chance the Bishop admits a clerk at the presentation of some one, who has no right to the presentation, to the prejudice of the true patron, in which cases it is not expedient to commit it to the bishops, because they might easily not return the truth, so that they might maintain their own act, and therefore it is better (as it seems), if it be doubted whether it is vacant or not, that in this state of doubt the assise should proceed, and a mandate be sent to the

mittat, qui si non admiserit, sum̄oneatur q sit ad ostendendum quare non, et in quo casu perveniri poterit usq; ad incumbramentū factum per episcopum vel alium ordinarium tollendum. Et tunc tenetur episcopus deliberare ecclesiam, vel dare aliam præsentato equivalentem, ut satisfaciat præsentato. Debet etiam clericum admissum p episcopum compellere quod teneat ad verum patronum ut satisfaciat patrono. Et notandum quod ecclesia potest vacare de jure & non de facto (ut prædictum est), & potest de jure simul & de facto, & sic justè vacat. Item si vacaverit de jure & de facto, statim capiatur assisa. Si autem de jure vacet & non de facto, quia incumbrata est, sine periculo capi poterit assisa ut inquiratur de incumbramento, & sic agat querens versus eum qui incumbravit ad tollendum: ut si episcopus instituerit clericum ante lapsum sex mensium vel ad præsentationem ejus qui non habuerit jus præsentandi. Item si clericus se intruserit propria autoritate sine episcopo, vel sine alio ordinario, in quo casu capiatur assisa sicut de ecclesia vacante. Institutio verò clerici in ecclesiam est quasi matrimonium spirituale, & sicut episcopus habet cognitionem de contractu matrimonii in causa bastardiæ & cognitionem,[1] ita habebit cognitionē de dissolutione si matrimonium dissolvatur, q quidem locum haberet in hoc casu, & ideò non pertinent cognitio[2] ad judicem secularem, cùm multum non differant spirituale matrimonium & carnale, & unde si rex propria autoritate inquirat & judicet ecclesiam esse vacantem, cùm non sit, & mandaverit q episcopus admittat & si non admise-

f. 242. Britton, *ib.* § 9.

Britton, *ib.* § 10

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[1] "et conjunctionis." MS. Rawl. C. 159.

[2] "pertinet." MS. Rawl. C. 160.

bishop to admit, who if he has not admitted, may be summoned to attend and show cause why he has not so done, and in which case one may arrive at the removal of the encumbrance caused by the bishop or other ordinary. And then the bishop is bound to deliver the church or to give another equivalent church to the person presented, that satisfaction be made to the presentee. He ought likewise to compel the clerk admitted by the bishop that he should hold of the true patron, that satisfaction be made to the patron. And it is to be noted that a church may be vacant of right but not in fact (as aforesaid), and it may be vacant both of right and in fact, and so it is justly vacant. Likewise if it be vacant of right and in fact, let an assise be held immediately. But if it be vacant of right but not of fact, because it is encumbered, an assise may be held without peril that an inquiry be held concerning the incumbrance, and so the plaintiff may proceed against him who has encumbered it in order to remove the incumbrance, as if the bishop has instituted a clerk before the lapse of six months or at the presentation of him who had not the right of presenting. Likewise if a clerk has intruded himself of his own authority without the bishop or without any other ordinary, in which case let an assise be held as if concerning a vacant church. But the institution of a clerk into a church is as it were a spiritual marriage, and as the bishop has cognisance con cerning a contract of marriage in a cause of bastardy and of affinity, so he will have cognisance concerning the dissolution if it be dissolved, which indeed would have place in this case, and therefore the cognisance does not pertain to the secular judge, since a spiritual marriage does not differ much from a carnal one, and hence if the king by his own authority should inquire and adjudge that a church was vacant, when it was not so, and has commanded that the bishop admit, and if the bishop has not admitted, the bishop will not on that

f. 242.

rit, non erit episcopus propter hoc puniēdus, licet non obediat, & qui dixerit illam vacare, hoc doceat per literas ordinarii: quia ad episcopum pertinet cognitio de vacatione & mandato ipsius debet fides adhiberi, & secundùm hoc procedet assisa vel remanebit. Et tale mandatum episcopi non semper sufficit plenè ad probationem sine aliis adminiculis, licet sufficiat ad præsentationem, quæ quidē aliquando veram ꝓbationem admittit in contrarium. Item dicitur (advocationē cujus idem talis dicit ad se pertinere) ex quo quidem elici potest, quòd oportet querentem docere ꝗ ad ipsum pertineat actio & querela in fundatione intentionis suæ. Itē dicitur (q̃ talem advocationem ei deforciat) oportet querētem docere rationem in intentione sua, quare sibi impedientem habeat obligatum, ꝗ seysinam præsentationis suæ impediverit, per hoc etiam ꝗ dicitur ꝗ advocationē illam ei deforciat, dicunt quidam ꝗ per hoc innuitur impedientem esse in seysina & querentem extra, ad ꝗ respondere poterit ꝗ satis deforciat, qui omninò uti non permittat vel modo debito, licet omninò non expellat, ad similitudinem ejus quod dicitur supra de nova disseysina qualiter sit in principio.

Britton, *ib.* § 12.

Cap. IV.

1. De exceptionibus contra assisam. f. 242 b.

Ex omnibus prædictis articulis, qui in brevi continentur, plures elici possunt exceptiones ad assisam omnino perimendā vel differendā; sed si ille impediens omnes prædictos articulos concesserit, excipere possit contra assisam ꝗ ille qui portat assisam de seysina & præsentatione antecessorū suorum, post præsentationē

account have to be punished, although he does not obey, and he who has said that it is vacant, let him prove it by the letters of the ordinary; because the cognisance of the vacancy pertains to the ordinary, and faith ought to be given to his mandate, and according to it the assise should proceed or be stayed. And such a mandate of the bishop does not always suffice fully for proof without other supports, although it may suffice for a presentation, which sometimes admits of a true proof to the contrary. Likewise it is said, "the advowson of "which such a person says that it belongs to himself;" from which it may be elicited, that the plaintiff ought to show that the action and complaint pertains to himself in the foundation of his declaration. Likewise it is said, "who deforces him of such an advowson;" it is incumbent that the plaintiff should show in his declaration the reason wherefore he holds that the defendant impedes him, that he has impeded the seysine of his presentation, by this also which is said that "he deforces "him of that advowson," some say that by this is meant that the impeder is in seysine and the plaintiff out of seysine; to which it may be answered that he sufficiently deforces who does not permit him to use it either at all or in due manner, although he does not altogether expel him, after the likeness of that which has been said concerning novel disseysine, in what manner it may be in the beginning.

Chapter IV.

1. Of exceptions against the assise. f. 242 b.

From all the aforesaid articles, which are contained in the writ, many exceptions may be elicited either to destroy the assise or to delay it; but if the disturber has admitted all the above articles, he may except against the assise that he, who brings the assise concerning the seysine and presentation of his ancestors, has after that presentation given that advowson by

Britton, l. iv. ch. iv. § 1.

illam dedit advocationem illam per se vel cū teñto ad q advocatio ptinet ipsi impedienti vel alicui antecessorum suorum per chartā quā proferat, & quæ hoc testatur. Et unde bene cōcedere potest q talis antecessor præsentavit justè, sed de cætero præsentare non potest prædicta ratione. Et unde videndum inprimis an ille contra quem excipitur plenę sit ætatis vel infrà ætatem. Si autē plenæ ætatis fuerit, benè potest cognoscere chartam & donum, sed replicare poterit contra exceptionem q post chartam illam, præsentavit ille talem N. qui ad præsentationem suam fuit admissus, & ita q charta illa vacua & donum nullum, & hoc probare poterit p assisam captam in modum juratæ & non in modum assisæ, nisi ita sit q querens habeat pro se triplicationem, ut si dicat, q quamvis charta vacua sit & donum nullū p secundam præsentationem ipsius donatoris, cùm post illam præsentationē fecerit eidē tali & antecessoribus suis aliam chartā de donatione novā, & ita q præsentatio ptinet ad ipsum, vel dicere potest q primam chartam confirmavit & fecit eam validam p confirmationem, quæ invalida facta fuit p nō usum & p secundā pręsentationem, & hoc offerat pbare p assisam & p testes in charta nominatos, si alius simpliciter negaverit chartam & confirmationem, nisi ita sit q velit quadruplicare & docere se post hæc omnia præsentasse. Si autem triplicare voluerit & concedere post primam chartam factam esse pręsentationem, & chartam sic esse vacuam, sed postea impetravit super eū breve de warantia chartæ, ad q talis vel antecessor suus summonitus fuit in curia, chartam illam cognovit & donū & ita q finis factus fuit, & cyrographū quoddam pfert q testaī q prædictus talis cognovit prædictam advocationē esse jus suum ut illam quam habuit de dono suo. Ad q responderi poterit q finis

itself or with a tenement to which it appertains to the disturber himself or to one of his ancestors by a deed which he produces, and which testifies this. And hence he may well concede that such an ancestor justly presented, but cannot present now for the reason aforesaid. And hence we must see in the first place whether he against whom the exception is raised is of full age or under age. But if he be of full age, he can well acknowledge the deed and the gift, but he may reply against the exception that after that deed he presented so-and-so N., who was admitted upon his presentation, and so that the deed is void and the gift is null, and this he will be able to prove by an assise held after the manner of a jury and not after the manner of an assise, unless it be that the plaintiff may reply, as if he should say that although the deed was void and the gift null on account of the second presentation of the donor himself, since after that presentation he made to the same so-and-so and his ancestors another deed of a new donation, and so that the presentation belongs to him, or he may say that he confirmed the first deed and made it valid by his confirmation, which had become invalid by non-user and by a second presentation, and this he may offer to prove by an assise and by the witnesses named in the deed, if the other shall have simply denied the deed and the confirmation, unless it should be that he wishes to rejoin and to show that he has presented after all these events. But if he has wished to reply and to concede that a presentation was made after the first deed, and the deed was thus void, but that he afterwards sued out against him a writ of warranty of charter, to which so-and-so or his ancestor was summoned into court and there acknowledged the deed and the donation, and so that a fine was made, and he produces a certain chirograph, which testifies that so-and-so aforesaid acknowledged the said advowson to be his right as that which he had from his donation. To

& cyrographū ei nocere non debet, quia omninò dependet ex donatione quadam imperfecta, eo q idem talis qui cyrographum profert nullam habuit seysinam, & ideò cùm charta vacua sit & donum imperfectum quia sine seysina, & ideò petat judicium: quia cùm principale, scilicet donum non valet, nec ea quæ sequuntur & ex dono dependent valere debent, scilicet finis nec cyrographum. Item esto q quis dederit manerium cum advocatione alicui in feodo sibi & hæredibus suis, & antequam ecclesia vacaverit, ille cui donatum est, & antequam præsentavit, manerium cum pertinentiis ad aliū trāstulerit, & tunc primū ecclesiam vacare contigerit, primus donator præsentat, primus donatorius similiter & secundus similiter, sed non ad omnes pertinet præsentatio, quæro igitur quis eorum alteri debeat præferri? Et sciendū q non primus donatorius, qui nunquam præsentavit nec seysinam habuit, & q non habuit ad alium transferre non potuit. Igitur est vacua donatio quantum ad primum & secundum donatorem.[1] Remanet igī de necessitate cum donatore qui semper remansit in possessione præsentandi, ex quo donatorius illam ad aliū trāstulit ante præsentationem & ante usum, & sic dici possit de pluribus usq, in infinitum. Item esto q secundus donatorius aliquo casu vellet warantum vocare primum donatorium, non valeret vocatio, cùm secundus donatorius in possessione non sit, nec potest quis alium defendere in possessione nisi eum qui fuerit in possessione, cùm warrantia nihil aliud sit quàm possidentem defendere: sed si de facto warantisaverit & warantum ulterius vocaverit primum donatorem, nec ipse ei warantisare tenetur, tum quia

Britton, *ib.* § 3.

f. 243.

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[1] "donatorium," MS. Rawl. C. 160.

which it may be answered that the fine and the chirograph ought not to hurt, him because it depends altogether from a certain imperfect donation, inasmuch as he who produces the chirograph had no seysine, and therefore since the charter is void and the donation imperfect because it is without seysine, and therefore he claims judgment, because when the principal thing, to wit, the donation is not valid, those things which follow and depend on the donation ought not to be valid, to wit, the fine and the chirograph. Likewise let be that some one has given a manor with an advowson to a certain person for himself and his heirs and before the church has become vacant, he, to whom the donation has been made, and before he has presented, has transferred the manor with its appurtenances to another, and it has then happened that the church becomes vacant for the first time, the first donor presents, the first donatory in like manner, the second donatory in like manner, but the presentation does not belong to all, I ask, therefore, who of them ought to be preferred to the others? And it is to be known that not the first donatory who has never presented nor had seysine, and he could not transfer to another what he never had. The donation is therefore void as regards the first and second donatory. It therefore remains of necessity with the first donor who has always remained in possession of the presentation, inasmuch as the [first] donatory transferred it to another before presentation and before use, and so it may be said of several persons without end. Likewise let it be that the second donatory in any case wished to call to warranty the first donor, the call would not be valid, since the second donatory is not in possession, nor can any one defend another in his possession excepting him who has been in possession, since a warranty is nothing else than to defend a possessor; but if he has in fact warranted and has further called the first donor as a warrantor, he is neither himself bound to

f. 243.

non possidet, tum quia revocare non potest, nec rehabere potest secundus donatorius q nunquam habuit nec habere potuit. Sed esto q primus donator secundo donatorio confirmavit donum primi donatorii, adhuc non convalescit donum propter confirmationem, cùm donum sit alienum & non ipsius confirmantis, nec alicujus antecessoris sui, & quia nullum nec inceptū nec pfectū. Et si uterq, præsentaverit tam confirmans quàm ille cui confirmatur, confirmans per assisam obtinebit. Item si ille secundus donatorius præsentaverit de facto & cùm ita in seysina fuerit, advocationem ad alium transtulerit qui similiter præsentaverit, & ita fuerit in seysina præsentandi, & contingat ecclesiam vacare, & primus donator præsentaverit, & ultimus donatorius, si uterq, illorum assisam ultimæ præsentationis arramaverit, ultima seysina præferri debet primæ, nec erit assisa postmodū capienda super assisam, sed primus donator sibi perquirat (si voluerit) per breve de recto super ipsa proprietate, & sibi ipsi imputare poterit propria negligentia[1] super ipsa possessione, et de hac materia supra de donationibus.

Britton, *ib.* § 4 and 5.

2 Si charta proferatur, oportet quod probetur per testes in charta nominatos. Britton, *ib.* § 6.

Item cùm charta proferatur (ut prædictum est) contra assisam, si omninò dedicatur, oportet q probetur per testes in charta nominatos, et p assisam captam in modum juratæ, nisi fortè ille contra quem pfertur infrà ætatem extiterit, qui ad chartam respondere non poterit ante ætatem. Et ideò de necessitate oportet deferre assisam usq, ad ætatem, sed de consilio curiæ provideatur de pensione retinenda (sicut prædictū est) ad cautelam. Si autem nulla charta contra minorem, tunc procedat assisa in minore ætate nec remanebit

[1] "propriam negligentiam," MS. Rawl. C. 160.

warrant it to him, as well because he does not possess as because he cannot revoke, nor can the second donatory recover the thing which he never had nor could have. But let it be that the first donor has confirmed to the second donatory the donation of the first donatory, the donation is not yet validated through the confirmation, since the donation is that of a stranger and not of the party confirming, nor of any ancestor of his, and because it is null, neither begun nor completed. And if each has presented, as well the confirmer as the person to whom it is confirmed, the confirmer shall obtain it by an assise. Likewise if the second donatory has presented in fact, and when he was thus in seysine, has transferred the advowson to another, who has in like manner presented and so was in seysine of the presentation, and it happens that the church is vacant, and the first donor has presented and the last donatory, if each of them has set up an assise of last presentation, the last seysine ought to be preferred to the former, nor shall an assise be afterwards held upon an assise, but let the first donor, if he wishes, proceed by writ of right upon the property itself, and he may impute to himself his own negligence upon the possession itself, and concerning this matter [we have treated] above concerning donations.

2. If a charter be produced it is incumbent that it be proved by the witnesses named in the charter.

Likewise when a charter is produced (as aforesaid) against the assise, if it be altogether denied, it is incumbent that it be proved by the witnesses named in the charter, and by an assise held after the manner of a jury, unless by chance he against whom it is produced should be under age, who cannot answer to the charter before he has come of age. And therefore it is of necessity incumbent to defer the assise until he has come of age, but with the advice of the court let provision be made for retaining a pension (as aforesaid) for caution's sake. But if no charter is produced against a minor, then let the assise proceed in the case of a minor, nor shall it be

assisa, si finis et cyrographum factum fuerit in curia dñi regis, cùm minor infrà ætatem debeat ad quamlibet finem respondere. Si autem majori objiciatur charta antecessoris (ut supra dictum est), à majore vel minore si dedicatur, probetur. Si autem non concedatur, si dicat[1] q vacua sit per presentationem subsequentem et apertè[2] adversa negetur præsentatio post chartam, pcedat assisa in modū juratę de consensu partium sub iis verbis, scilicet utrum donator qui assisam portat præsentavit ad eandem ecclesiam, postquam chartam illam & donum fecerat predicto tali, vel non, ut idem talis dicit. Item respondere poterit quis contra assisam q pcedere non debeat, quia ille qui pfert assisam vel aliquis antecessorū suorū teñtum (ratione cujus presentat) tali dedit et alienavit cum omnibus pertinentiis suis sine aliquo retenemento quocunq, modo alienationis, ita vendidit illud ei qui non presentat vel alicui antecessorum suorum, sive fuerit in possessione presentandi sive non, sine aliqua retentione vel exceptione, vel dimisit ad terminū vitę vel annor, et id quandoq p chartas et instrumenta declarari poterit, si in judicio pferatur: et quo casu, pcedet assisa sine die, si fiat disputatio de veritate et fide instrumentorum, si falsitatis arguantur, vel per assisam captam in modum juratæ si partes consentiant poterit negotium terminari. Et notandum quòd chartæ & instrumenta ante judicium sunt exhibenda, si autem post, locum habere non possunt, quia sub prætextu instrumentorum postea compertorum & exhibitorum sententia lata retrahi non debet. Item excipi poterit contra assisam, quòd ille qui profert assisam nihil habet in manu de tenemento suo ad quod pertinet advo-

Britton, *ib.* § 7.

Britton, *ib.* § 8.

f. 243 b.

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[1] "sed dicatur," MS. Rawl. C. 160. | [2] "a parte," *id.*

stayed, if a fine and chirograph have been made in the court of the king, since a minor under age ought to answer to every fine. But if the charter of an ancestor be objected to a person of full age (as abovesaid), if it be denied by a major or a minor, let it be proved. But if it be not conceded, if it be said that it is void through a subsequent presentation, and a presentation after the charter be denied by the adverse party, let an assise proceed after the manner of a jury with the consent of the parties under these words, to wit, whether the donor who brings the assise presented to the church after he had made that charter and donation to so-and-so aforesaid or not, as the said so-and-so says. Likewise a person may answer against the assise that it ought not to proceed, because he who brings forward the assise or some one of his ancestors gave the tenement (by reason of which he presents) to so-and-so, and alienated it with all its appurtenances without retaining anything whatsoever in the mode of alienation, [or] he so sold it to him who does not present or to some one of his ancestors, whether he was in posssssion of the presentation or not, without any retention or exception, or he leased for a term of life or of years, and this can be made clear by charters or instruments, if it be brought forward in judgment; and in which case the assise shall proceed without a day, if there be a discussion concerning the truth and the faith of the instruments, if they be charged with falseness, or the business may be terminated if the parties consent through an assise held in the manner of a jury. And it is to be noted that the charters and instruments are to be exhibited before the judgment, but if afterwards, they can have no place, because a sentence once passed cannot be retracted under the pretext of instruments afterwards found and exhibited. Likewise an exception can be taken to the assise, that he who brings forward the assise has in his hand nothing of the tenement to which the advowson ap-

f. 243 b.

catio, quia illud amisit per judicium vel per disseysinam, vel alio quocunque modo, quamvis jus habeat in tenemento & in pertinentiis primò recuperare debet tenementum ad quod pertinet advocatio, & tunc postea præsentet & non ante. Et de hac materia in rotulo de termino Sancti Michaelis anno regis H. tertio incipiente quarto in com̃ Norf. de Thom̃ Bardolf. ubi objectum fuit præsentanti quòd nullam terram habuit in villa in qua ecclesia sita fuit, ad quod responsum fuit & recognitum ab eo qui tulit assisam, quòd nullam terram habuit in villa illa, sed antecessores sui qui inde fuerint disseysiti, & unde cecidit assisa, quia advocatio fuit de pertinentiis, quod quidem non esset si doceri posset contrarium. Item si aliquis præsentationem suam semel retinuerit per assisam, & proprietarius petat advocationem vel tenementum ad quod advocatio pertinet per breve de recto, & pendente placito incipiat ecclesia vacare, petens ille præsentare non poterit, antequam advocationem vel tenementum disrationaverit. Item contra assisam replicari poterit, quòd ille qui assisam profert, nec aliquis antecessorum suorum, jus vel seysinam habuerit in advocatione, de qua agitur, nisi ad vitam tantum quacunque ratione, vel ad terminum, ita quòd nihil juris descendere poterit ad hæredes. Si mulier autem post mortem viri sui waranto suo de dote sua præsentanti & seysinam suam vel antecessorum suorum per assisam petenti respondeat, quòd præsentatio ad ipsam pertineat excipiendo ratione dotis suæ quàm habet in villa in qua ecclesia sita est.

Britton, *ib.* § 9.

Britton, *ib.* § 10.

3. Item de advocatione ecclesiæ nostræ.

Et unde impetravit super warantum suum breve Quare impedit, videndum erit inprimis qualiter sit dos constituta, ut si habuerit tertiam partem alicujus villæ,

[1] "si mulier aliqua." MS. Rawl. C. 160. The paragraph (3) should commence here.

pertains, because he lost it by a judgment or by a disseysine or in some other way, although he has the right to the tenement and the appurtenances, he ought in the first place to recover the tenement to which the advowson appertains, and let him present afterwards, but not before. And on this matter there is a something in the Roll of St. Michael's term in the third and fourth year of king Henry in the county of Norfolk, concerning Thomas Bardolf, where it was objected to the presentor that he had no land in the vill, in which the church was situated, to which it was answered and acknowledged by him who brought the assise, that he had no land in that vill, but his ancestors had who had been disseysed thereof, and hence the assise lapsed because the advowson was of the appurtenances, which would not be so, if the contrary could be shown. Likewise if a person has once retained his presentation through an assise, and the proprietor claims the advowson or the tenement to which the advowson belongs through a writ of right, and whilst the plea is pending the church begins to be vacant, that claimant cannot present before he has deraigned the advowson or the tenement. Likewise against the assise it may be replied, that [neither] he who brings the assise nor any of his ancestors had the right or the seysine in the advowson, which is the subject of the action, except for life only in whatever manner or for a term, so that no right could descend to his heirs. But if a woman after the death of her husband should answer to her warrantor for her dower presenting and claiming by an assise his own seysine or that of his ancestors, that the presentation belongs to her, by excepting by reason of her dower which she has in the vill in which the church is situated,

3. Likewise concerning the advow-

And whereupon she has sued out against the same warrantor a writ of *Quare impedit,* it will have to be seen how the dower has been appointed, as if she have

& petat quòd ratione illius partis possit præsentare saltem tertia vice, vel si de toto manerio fuerit dotata integrè nulla facta exceptione cum omnibus pertinentiis, vel excepta advocatione. Si autem de toto manerio integro sine exceptione, tunc valebit ei sua actio. Si autem excepta advocatione non, nisi aliquid agatur vel[1] in contrarium ex speciali conventione. Si autem dotata fuerit de tertia parte, tunc nihil juris habet in præsentatione licet ecclesia sita sit in sua tertia parte, nisi hoc eveniat ex aliqua specialitate, s. q dotata fuerit de tertia parte cum tota advocatione in quacunq, parte ecclesia sita fuerit, sed alio modo nō valebit ei sua actio, tū q̃a ep̃us non admittit clericos ad particulas, licet patiař sectionē nec plura habeat capita sicut monstrum. Et q ep̃us non admittit particulas, videri poterit de termino s. H. An. regis H. 14. in coñ Suff. de Maria de Walenus, Herb. de Alez.[2] tū quia ratione tertiæ partis nihil juris clamare poterit omninò in advoc. nec in parte nec in toto certis vicibus, nisi sit aliqua specialitas q̃ hoc inducat ut dicť est, sicut videri poterit p exemplū. Cōstitutio enim dotis similis est quodammodo donationi. Esto igitur q quis habeat maneriū cum advocatione & totum dederit diversis vel uni per particulas retenta sibi aliqua minima portione, & sic dederit quamlibet partem cum omnibus pertinentiis suis, nulla facta mentione de advocatione, remaneat semper advocatio cum parte retenta, cùm specialiter non transferatur, secundùm quod videri poterit infrà de jure dotium.

f. 244.

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[1] "vel," ommited MS. Rawl. C. 160.

[2] "Herberto de Azelym," *id.*

the third part of a certain vill and claims that by reason of that part she may present at least for the third turn, or if she has been endowed entirely with the whole manor no exception having been made with all its appurtenances, or with the advowson excepted. But if she has been endowed with the whole manor without exception, then her action will be valid. But if with the exception of the advowson not so, unless something be arranged to the contrary by a special convention. But if she has been endowed with the third part, then she has no right to the presentation although the church be situated in her third part, unless this arises from some specialty, to wit, that she was endowed with the third part together with the entire advowson in whatever part the church may be situated, but in any other way her action will not be valid, as well because the Bishop does not admit clerks to parcels [of a preferment], although it may admit of being cut into parcels, nor has it several heads like a monster. And that a Bishop does not admit to parcels may be seen in St. Hilary term in the fourteenth year of king Henry in the county of Suffolk in the case of Maria de Walenus and Herbert de Alez., as well because by reason of her third part she cannot claim any right at all to the advowson either in part or in whole for certain turns, unless there be some specialty, which induces this as it is said, as may be seen by an example. For the constitution of dower is something similar to a donation. Let it be therefore that a person has a manor with an advowson and has given the whole of it to different persons or to one in parcels having retained for himself some very small parcel, and so has given some part with all its appurtenances, no mention having been made of the advowson, the advowson will always remain with the part retained since it has not been specially transferred, according to what may be seen below concerning the right of dowers.

son of our church.

f. 244.

4. De diversis usibus super hujusmodi materia de ultima præsentatione.

Item quæri potest si marito, qui per legem Angliæ tenet, detur assisa ultimæ præsentationis de seysina, quam simul habuerunt & ipse & uxor sua in vita uxoris, vel si competat hæredibus, & ei ꝑ consequens nomine hæredū, videt̃ potius ꝗ ei cōpetat breve (Quare impedit) nomine suo, cùm nunquā præsentaverit per se, quàm assisa nomine hæredum: hæredes enim bene possunt esse plenæ ætatis sicut infrà ætatem. Item si quis terram teneat de hæreditate uxoris suæ, quæ hæredes habuerit de alio viro, per legem Angliæ, & cùm semel per se contulerit ecclesiam & cùm ita fuerit in possessione præsentandi, advocationem illam dederit alicui loco religioso vel præsentaverit vel alio modo alienaverit, & hæres post mortem talis assisam ultimæ præsentationis de seysina antecessoris sui quàm parastri sui, cadit assisa, si cognoscat præsentationem suam & donum parastri sui, propter seysinam illius talem qualem, & agendum erit de vice & proprietate. Et sic dici poterit (ut videtur) de omnibus aliis qui tenent advocationem ad terminum vitæ, cùm semel præsentaverit[1] nomine ꝓprio: secus autem erit de eo qui præsentat nomine custodiæ, quia hoc facit nomine alieno. Item esto quod quis tradat alicui tenementum aliquod cum advocatione donec ei provideatur, & advocationem dederit antequam provisum fuerit, & ille cui data fuit præsentaverit, & tunc deinde provisum fuerit, revocatur donatio & advocatio per breve de ingressu, sed non per assisam: quia talis dare non poterit ad remanentiam. De hac materia habetis anno regis H. 7. in com̃

[1] "præsentaverint," MS. Rawl. C. 160.

4. Concerning divers uses upon matters of this kind concerning a last presentation.

Likewise it may be asked if to a husband who holds by the law of England there be given an assise of last presentation concerning the seysine which they both had, himself and his wife, in the lifetime of his wife, or if it is competent to the heirs and to himself consequently in the name of the heirs, it seems rather that he is entitled to a writ of *Quare impedit* in his own name, since he has never presented by himself, than to an assise in the name of the heirs, for the heirs may well be of full age as under age. Likewise if any one holds land by inheritance of his wife, who had heirs by another man, according to the law of England, and when he has once by himself conferred the church and when he is thus in possession of the presentation, he has given that advowson to some religious place or has presented or has alienated it in some other manner, and the heir after the death of such an one [has brought] an assise of last presentation concerning the seysine of his ancestor or his step-father the assise fails, if he acknowledges his presentation and the gift of his step-father on account of his seysine whatever it may be, and the action will have to be brought for the turn and for the property. And so it may be said (as it seems) concerning all others who hold an advowson for the term of their life, when they have once presented in their own name, but it will be otherwise with him who presents in the name of his wardship, because he does this in another's name. Likewise let it be that a person delivers to some one a tenement with an advowson until provision has been made for him, and has given the advowson before provision has been made, and he to whom he has given it has presented, and then at length provision has been made for him, the donation and the advowson are revoked by a Writ of Entry, but not by an assise; because such a person cannot give for ever and ever. Concerning this matter you have a case in the seventh year of king Henry in the county of

Bed. de Falcano de Briante & priore de Neveham. Assisa ultimæ præsentationis, de ecclesia de Haspeele. Item esto quòd aliquis qui jus nec titulum habuerit in advocatione præsentaverit dum verus hæres fuerit infrà ætatem & in custodia alicujus, & cùm ad ætatem pervenerit ecclesia vacaverit & uterq; presentaverit & assisam portaverit, ille qui ultimò præsentavit per assisam retinebit, donec hæres sibi de jure perquisiverit, et[1] de termino s. H. an. regis H. nono in com̃ Lincolñ de priore de Osneby & Conano de Weleton de ecclesia de Weleton. Item esto q quis clericum præsentaverit, qui ad præsentationem suam fuit admissus, & venit tunc quis à latere & clerico instituto moverit questionem & ipsum gravet per clericum alium, & postea inter eos convenerit q ille qui questionem moverit iterum de facto præsentet clericū institutum episcopo loci, qui ipsum admiserit in præjudicium primi præsentātis, & ita remaneat talis psona tota vita sua bis præsentatus, & bis institutus, si ille qui ultimò presentavit postmodum vacante ecclesia ex tali presentatione agere velit per assisam, non audietur, quia presentatio super presentationem de eodem facto & eadem re & de eadem presentatione facta non valebit: ut de termino P. anno regis H. nono in com̃ Norff. Assisa ultimæ præsentationis inter Matildam de Rochesford & Robertum de Tunston de ecclesia de Tunston. Item esto quòd quis presentaverit ad eclesiam vacantem & pendente presentatione antequam clericus admittatur contingat presentantem mori, et eo mortuo ratione custodie presentat custos alium clericum, et durante contentione inter clericum presentatum à pa-

Britton, *ib.* § 12.

f. 244 b.

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[1] "ut," MS. Rawlinson, C. 160.

Bedford concerning Fulk de Briant and the prior of Neveham, an assise of last presentation concerning the church of Haspeele. Likewise let it be that some one, who had neither the right nor the title to the advowson, has presented whilst the true heir was under age and in the wardship of some one, and when he has come of age the church has become vacant and each has presented and has brought an assise; he who has last presented shall retain by the assise until the heir has proceeded for himself of right, [as may be seen] in the term of St. Hilary in the ninth year of King Henry in the county of Lincoln concerning the prior of Osneby and Conan de Weleton concerning the church of Weleton. Likewise let it be that some one has presented a clerk, who upon his presentation has been admitted, and some collateral claimant comes forward, and the clerk having been instituted he raises a question and burdens him by another clerk, and afterwards it is agreed amongst them that he who has raised the question should present in fact a second time the instituted clerk to the bishop of the place, who admits him to the prejudice of the first presentor, and so such parson remains for all his life twice presented and twice instituted, if he who last presented upon the church becoming vacant wishes to proceed by an assise upon such a presentation, he shall not be heard, because a presentation made upon a presentation from the same fact and on the same thing and concerning the same presentation shall not be valid; as in Easter term in the ninth year of king Henry in the county of Norfolk, an assise of last presentation between Matilda de Rochesford and Robert de Tunston concerning the church of Tunston. Likewise let it be that some one has presented to a vacant church, and whilst the presentation is pending before the clerk is admitted, it happens that the presentor dies, and upon his death by reason of his wardship the guardian presents another clerk, and during the contention between the clerk pre-

f. 244 b.

trono et custodem, contingat quòd heres perveniat ad etatem & tertium presentaverit, vel se teneat ad presentationem primam antecessoris sui, videndum est cujus presentatio debet preferri, & sciendum quod heredis presentatio, et non custodis, nec antecessoris etiam, quia ultima presentatio preferetur. Et de hac materia inveniri poterit in itinere abbatis de Radinge et M. de Pateshul in com̃ Wygorñ. Assisa ultime presentationis, de ecclesia Sanctæ Mariæ de Wichio. Item alius casus in itinere M. de Pateshul in com̃ Kanc. inter priorem de Lewes et Wilhelmum de Arbervil de ecclesia de Stokshyre, ubi idem prior arramaverit Assisam ultimæ præsentationis versus eundem Wilhelmum, et idem Wilhelmus cognovit præsentationem ipsius prioris, sed dicebat, quòd fuit tempore quo pater suus fuit infrà ætatem & in custodia archiepiscopi Cantuariensis, alterius scilicet quàm ipsius prioris qui questus fuit. Et unde quia cognovit præsentationem prioris in cujus custodia non fuit, quia pater suus fuit in alterius custodia quàm prioris, recessit prior quietus in seysina sua, salva tamen Wilhelmo questione super proprietate. Item esto quòd manerium aliquod integrè cum advocatione ecclesiæ & aliis pertinentiis suis detur ad firmam personæ ejusdem manerii, quo casu non poterit illa ecclesia conferri antequam vacaverit, nec vacare poterit nisi post mortem rectoris vel si se dimiserit, quod quidem facere non possit nisi in fraudem tradentis (ut videtur), quo casu videndum esset si hoc faceret in fraudem vel necessitate ductus certa ratione: si autem in fraudem, non valet resignatio; si autem necessitate vel certa ratione compulsus, hoc posset sustineri. Sed quid si in vita sua alii dimiserit termi-

Britton, *ib.* § 13.

sented by the patron and the guardian, it happens that the heir has come of age and has presented a third clerk or keeps himself to the first presentation of his predecessor, we must see whose presentation ought to be preferred, and it is to be known that the presentation of the heir, and not of the guardian nor of the predecessor even, because the last presentation shall be preferred. And on this matter something will be found in the iter of the abbot of Reading and Martin de Pateshull in the county of Worcester, an assise of last presentation, concerning the church of St. Mary of Wichio. Likewise another case in the iter of Martin de Pateshull in the county of Kent between the prior of Lewes and William of Aberville concerning the church of Stokshyre, where the prior instituted an assise of last presentation against the said William, and the said William acknowledged the presentation of the prior himself, but said that it was at a time when his father was under age and in the wardship of the archbishop of Canterbury, to wit, a different person from the prior himself, who had claimed. And hence because he acknowledged the presentation of the prior in whose guardianship he was not, because his father was in the guardianship of another person than the prior, the prior withdrew quieted in his seysine, saving to William the question respecting the property. Likewise let it be that a certain manor in its entirety with the advowson of the church and other its appurtenances is given to farm to the parson of the same manor, in which case the church cannot be conferred before it has become vacant, nor can it become vacant except through the death of the rector, or if he shall have resigned it, which he cannot do except as a fraud against the lessor (as it seems), in which case it is to be seen if he should do this fraudulently or led by necessity in a certain manner; but if fraudulently, the resignation is invalid; but if through necessity or in a certain manner compelled, this may be sustained. But what if during his life he has

num suum, & ipsum mori contingat infrà terminum suum, & hoc videndum erit utrum hoc fecerit in fraudem vel necessitate, & facta inquisitione secundùm hoc judicare oportebit. Item esto quòd in testamento suo terminum suum alicui legaverit vel illum reliquerit executoribus disponendum, videndum erit tunc si ipsi conferri[1] possent ecclesiam & præsentare, nescio quare non, cùm ille qui ad firmam tradidit in traditione illa nihil excepit, nec traditioni legem apposuit. Item vice versa si terminus concedatur alicui alii à rectore primo, & ille firmarius postea concedit terminum suum rectori, id idem erit observandum (ut videtur) quod in primo casu. Item esto quòd terminus præteriit & infrà terminum illum inceperit ecclesia vacare, vel post terminum antequam proprietarius sibi poterit perquirere, & firmarius præsentaverit, & pendente præsentatione firmarii incipiat proprietarius possidere, & tunc præsentaverit nomine suo, præsentatio sua prævalebit, quicquid autem ante factum fuerit per firmarium ratum erit ad similitudinem custodis vel custodiæ ut supra. Eodem modo si quis seysinam antecessoris infrà ætatem petierit per assisam, pendente placito vacaverit ecclesia sive infrà ætatem sive post, si ex parte custodis nullus admittatur, præsentatus à proprietario obtinebit. Idem de termino S. M. anno regis H. vi. in com̃ Herford. de priore de Lantony, et Waltero Byseche de ecclesia de Pencombe quòd non capitur assisa ultimæ præsentationis in persona ejus, qui est infrà ætatem & petens. Item esto q mulier dotem habens & advocationem ecclesiæ præsentaverit clericum cùm vacaverit, & qui ad præsentationem suam

f. 245.

[1] "conferre," MS. Rawl. C. 160.

demised to another his term, and it happens that he dies within his term, and this will have to be seen into whether he has done this fraudulently or from necessity, and after an inquisition has been made according to this it will be proper to judge. Likewise let it be that in his testament he has bequeathed to some one his term or has left it to his executors to dispose of, it will have to be seen then whether they can confer the church and present, I know no reason why not, when he who leased it to farm excepted nothing in that lease, nor appointed any condition to the lease. Likewise conversely if a term be first granted to any one else than the rector, and the lessee afterwards grants his term to the rector, the same thing will have to be observed (as it seems) as in the first case. Likewise let it be that the term has passed away, and within that term the church began to be vacant, or after the term before the proprietor could claim for himself the lessee has presented, and whilst the presentation of the lessee is pending the proprietor begins to possess and has then presented in his own name, his presentation shall prevail, but whatever has been previously done by the lessee shall be ratified after the likeness of a guardian or a wardship as above. In the same manner, if any one within age has claimed the seysine of his ancestor by an assise, whilst the plea is pending the church has become vacant, whether whilst he was under age or after he came of age, if no one is admitted on the part of the guardian, the clerk presented by the proprietor shall obtain [institution]. The same may be seen in the term of St. Michael in the sixth year of king Henry in the county of Hertford, concerning the prior of Lantony and Walter Byseche concerning the church of Pencombe, that an assise of last presentation is not held in the person of him who is under age and a claimant. Likewise let it be that a woman having her dower and the advowson of a church has presented a clerk when it was vacant, and who upon her presentation was admitted, and the heir her

f. 245.

admissus fuerit, & heres warantus suus de dote sua advocationem illam postmodum alicui dederit, & vivente muliere post donationem illam ecclesiam contulerit, seysinam illam transmittit ad warantum suum hæredes[1] suos, & unde post talem seysinam necesse habebit donatorius habere novam donationem, vel prioris donationis confirmationem, quia antequam de seysina loqui poterit, nunquam in causa proprietatis obtinebit. Item si plures sint cohæredes, quorum quidam plenæ ætatis in possessione hereditatis proportione sua, quidam verò infrà etatem & sub custodia, & non sit nisi unica ecclesia que vacaverit, queritur quis preferri debeat in præsentatione, vel si omnes simul præsentare debeant et consentire, vel quidam eorum præferri aliis ratione æsneciæ vel pluralitatis? videtur q omnes simul p̃sentare deberent aut nullus in clericum[2] consentire, alioquin ordinabit episcopus, sive plenæ ætatis fuerit sive non, nisi partita sit hæreditas et divisa, cùm plenæ ætatis extiterit, vel aliter convenerit inter eos, nec erit episcopo locus gratificationi, si quilibet eorum vellet clericum suum singulariter præsentare & per se: quia nullum talem recipere posset ad presentationem unius sine præjudicio alterius coheredis. Aliter autem esse posset si unus qui totum jus haberet presentandi duos clericos vel plures simul vel diversis temporibus præsentaret. Item de una vacatione & præsentatione et ad unam ecclesiam plures possunt esse querentes & diversis rationibus, duo enim vel plures petere possunt præsentationem per assisam ratione successionis vel propriæ præsentationis. Item una vel plures ratione dotis vel alio modo tenendi ad vitam secundùm diversa genera præsentandi per breve: Quare impedit, vel Quare non permittit, vel quia aliquam partem habet villæ in qua sita est ecclesia de qua agitur, & quod vicissim &

Britton, *ib.* § 14.

Britton, *ib.* § 15.

Britton, *ib.* § 16.

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[1] "et heredes," MS. Rawl. C. 159. | [2] "et in clericum," *id.*

warrantor of her dower has afterwards given that advowson to a certain person, and during the lifetime of the woman after that donation has conferred the church, she transmits that seysine to her warrantor and his heirs, and hence after such a seysine it is necessary that the donatory have a new donation, or a confirmation of the prior donation, for before he can allege the seysine, he can never maintain his position in a cause of property. Likewise if there be several co-heirs, of whom some are of full age in possession of their inheritance in their proportion, but some are under age and under guardianship, and there is only a single church which is vacant, it is asked who ought to be preferred in the presentation, or if all ought to present together and to consent, or some of them ought to be preferred to others by reason of primogeniture or of plurality? it seems that all ought to present together or none and to agree upon a clerk, otherwise the bishop shall ordain, whether he be of full age or not, unless the inheritance is parted and divided, when he shall be of full age, or it has been otherwise agreed amongst them, nor will the bishop be able to gratify any one, if any of them wishes to present his clerk singularly and by himself, because he could not receive any such person upon the presentation of one without prejudice to another co-heir. But it might be otherwise if one who had the whole right of presenting should present two clerks or more at the same time or at different times. Likewise upon one vacancy and presentation and in reference to one church several may be claimants and for different reasons, for two or more may claim the presentation by an assise by reason of succession or of their own presentation. Likewise one or more [women] by reason of dower or by some other mode of tenancy for life according to the different kinds of presenting by a writ of *quare impedit* or of *quare non permittit*, or because he has some part of the vill in which the church is situated which is the subject of the action, and that he ought in turn and succes-

successivè debeat præsentare, et multis aliis rationibus: quas quidem omnes oportet [1] in principio diligenter examinare per ordinem, ut sciri possit (factâ examinatione) ad quos pertineat actio et ad quos non, et de processu in persona cujuslibet, in literis ad episcopum dirigendis oportet facere mentionem per tale breve exempli causa.

5. Breve episcopo, postquam recuperaverit per assisam ultimæ præsentationis.

Rex episcopo tali salutem. Sciatis quòd talis in curia nostra &c. recuperaverit seysinam suam versus talem per assisam ultimæ presentationis &c. Sciatis etiam quòd cùm talis [2] A. B. C. summoniti essent coram eisdem justiciariis nostris &c. ad audiendum predictam assisam, scilicet quis advocatus &c. predicti A. & B. venerunt et consenserunt in presentationem talis vel assensum prebuerunt vel recognoverunt &c. tali presentationem suam et eandem ecclesiam et etiam predictus C. recognovit coram eisdem justiciariis q nihil juris clamat in præsentatione nisi ut procurator talium, non obstante reclamatione talis, idoneam personam &c. Et in prædicta forma & modo prædicto possunt omnes formæ brevium de seysina facienda in uno brevi comprehendi, sicut infrà dicetur per particulas.

f. 245 b.

Cap. V.

1. Si mulier præsentaverit ratione dotis suæ.

Si cùm mulier dotem habens & advocationem clericum præsentaverit, qui admissus fuerit ad præsentationem suam, & hæres & warantus de dote sua advocationem illam postmodum alicui dederit vel vendiderit, & vacante ecclesia iterum in vita mulieris alia vice illam contulerit, non obstante donatione hæredis ex præsentatione sua seysinam suam præsentandi transmittit ad warantum suum & hæredes suos, & sic erit

Britton, *ib.* 17.

[1] "quod. quidem oportet," MS. Rawl. C. 160.

[2] "tales," *id.*

sively to present and for many other reasons: all of which he ought to examine diligently at the commencement, in order that it may be known (after an examination has been made) to whom the action appertains and to whom not, and mention ought to be made concerning the process in the person of each in directing the letters to the bishop by such a writ for example's sake:

5. A writ to the bishop after he has recovered by an assise of last presentation.

The king to bishop so-and-so greeting. Know ye that so-and-so has recovered &c. his seysine against such an one by an assise of last presentation &c. Know ye also that when so-and-so, A. B. C., were summoned before our said justiciaries to hear the aforesaid assise, to wit, what advocate &c., the aforesaid A. and B. came and consented to the presentation of the said so-and-so, or gave their assent or acknowledged &c. in so-and-so his presentation and the said church, and likewise the aforesaid C. acknowledged before the said justiciaries that he claims no right in the presentation except as the proctor of the said parties, notwithstanding the reclamation of such an one, that a fit parson, &c. And in the aforesaid form and in the aforesaid manner all forms of writ for making seysine may be comprised in one writ, as will be explained below by parcels.

f. 245 b.

CHAPTER V.

1. If a woman has presented by reason of her dower.

If when a woman having a dower and an advowson has presented a clerk, who has been admitted on her presentation, and the heir and warrantor of her dower has afterwards given or sold that advowson to a certain person, and the church becoming vacant a second time in the lifetime of the woman, notwithstanding the donation of the heir from her own presentation she transmits her seysine of presenting to her warrantor and his heirs, and so the charter will be void and the

charta vacua & donatio nulla, cùm donatorius loqui non posset de aliqua seysina. Item respondet aliquis sic contra assisam & dicat, q iste qui assisam profert præsentare non posset propter donationem & chartam subsequentem, ut supra dictum est, si charta dedici non possit, cadit assisa, & alius seysinam suam retinebit, cùm sit quasi in possessione, post donationem & chartam confectam. Si autem omninò dedicatur, oportet quòd probetur per testes in charta nominatos, & per probos & legales homines vicinos, & ea probata ulteriùs impediri non poterit sua præsentatio. Et non est consimile de rebus incorporalibus, quæ traditionem non patiuntur, ei quod est de rebus corporalibus ubi nulla est donatio, licet fiant chartæ & capiantur homagia, nisi subsequatur traditio & corporalis apprehensio ut supra. Si autem donator chartam recognoverit & dicat quòd postea præsentaret,[1] hoc dicere oportebit[2] per assisam, nec stabitur simplici verbo suo nec præsumptioni etiam tantum, licet proferat literas ordinarii quòd clericum admiserit ad præsentationem suam, nec erit necesse procedere ad assisam de seysina donatoris, quia per hoc, quod concedit chartam, excludit se à seysina & præsentatione sua, cùm nihil ostendere possit post confectionem chartæ de aliqua seysina.

Britton, *ib.* 18.

2. De advocatione data per eum, qui tenet per legem Angliæ.

Item si quis tenuerit ad vitam per legem Angliæ vel alio modo, cùm advocationem ecclesię semel contulerit, & postea advocationem dederit alicui episcopo, fortè qui illam præbendaverit, si hęres post mortem talis assisam ultimę pręsentationis arramaverit, & cognoverit pręsentationem & donum illius qui tenuit ad vitam, cadit assisa sua super seysinam donatoris qualem qua-

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[1] "præsentaverit," MS. Rawl. C. 159.

[2] "hoc docere oportet," MS. Rawl. C. 160.

donation null, since the donatory cannot speak of any seysine. Likewise some one may answer thus against the assise and may say, that he who brings the assise could not present on account of his donation and subsequent charter as above said, and if the charter cannot be denied, the assise falls, and the other will retain his seysine, since he is at it were in possession after the donation and the making of the charter. But if it be altogether denied, it is incumbent that it should be proved by the witnesses named in the charter, and by honest and loyal men of the neighbourhood, and upon its being proved his presentation cannot be further impeded. And the case concerning incorporeal things which do not admit of delivery is not similar to that which occurs concerning corporeal things where there is no delivery, although charters may be made and homages may be performed, unless delivery and corporeal taking follow as above. But if the donor has acknowledged the charter, and says that he afterwards presented, it will be incumbent that he say this by an assise, nor will his simple word avail nor the presumption even alone, although he produces the letters of the ordinary that he admitted a clerk upon his presentation, nor will it be necessary to proceed to an assise concerning the seysine of the donor, because by this, that he concedes a charter, he excludes himself from the seysine and his presentation, when he can prove nothing concerning any seysine after the making of the charter.

2. Of an advowson given by him, who holds by the law of England.

Likewise if a person has held for his life by the law of England or in some other manner, when he has once conferred the advowson of a church and afterwards given the advowson to some bishop, who perhaps has made it a prebend, if the heir after the death of such a person has instituted an assise of last presentation and has acknowledged the presentation and the gift of him who held it for life, the assise falls concerning the seysine of the donor, of whatever kind it may be, as well because

lem, tum quia ecclesia non vacat, & non competit ei remedium nisi super jure per breve de recto. Et de hac materia, inveniri poterit de termino s. M. anno regis H. vi. circa principium rotuli. Ut autem sciri possit, quis obtinere vel præferri possit[1] per assisam & quis non, per exemplum videndum erit de quibusdam casibus specialibus qui evenerunt tempore regis inter certas personas. Esto igitur[2] quòd querens dicat se vel aliquem antecessorum suorum pręsentasse certam personā, & inde posuerit se super assisam & juratores nihil inde sciverint, nec quis ultimam personam p̃sentaverit nec aliam ante ultimam & sic nec[3] deinceps, ut si dixerit se inde nihil scire, querens nihil capiat per assisam. De hac materia habetis de termino P. an̄o regis H. viii. in com̃ K. assisa ultimæ p̃sentationis inter priorē de Suth. & Warm̃ de mōte Kās. de ecclesia de Snanth. Ad hoc etiā facit q habetis de termino P. an̄o regis H. x. in com̃ Norf. de Sim. de Nod. de ecclesia de Judlibā, ibi em̃ dicit, q ubi constare non possit quis ultimā psonā p̃sentaverit nec aliam ante ultimam, q tunc pcedat loquela super recto & super ipsa pprietate, p illud idē breve sine alio. Et statim fiat narratio de seysina antecessoris & de recto de descensu ad petentem, ac si ab initio placitatus esset super ipso recto & ponat se tenens (secundùm q elegerit) vel in magnam assisam, vel defendat se p duellum, & interim si voluerint consentiant in clericum, alioquin devolvetur collatio ad episcopū, & si in una & eadem villa sint duo dominia & diversa feoda & unica ecclesia, &

Britton, iv. ch. iv. § 19.

f. 246.

[1] "quis capere possit," MS. Rawl. C. 160.

[2] "igitur" omitted MS. *id.*

[3] "nec" omitted MS. *id.*

the church is not vacant, and he is not entitled to a remedy except concerning the right by means of a writ of right. And upon this matter there will be found a case in St. Michael's term, in the sixth year of king Henry, near the commencement of the roll. But that it may be known who may prevail and be preferred through an assise and who not, may be seen by an example from certain special cases which happened in the time of the king between certain persons. Let it be therefore that a plaintiff says that he or some one of his ancestors presented a certain person, and thereupon he has put himself upon an assise, and the jurors have known nothing thereupon, nor who presented the last parson nor the parson before the last, and so in succession, as if he shall have said that he knows nothing thereabout, the plaintiff would gain nothing by the assise. Concerning this matter you have in Easter term in the eighth year of king Henry, in the county of Kent, an assise of last presentation between the Prior of Southwick and Warin of Monte Cassino concerning the church of Sneath. To the same effect is what you have in Easter term in the tenth year of king Henry, in the county of Norfolk, about Simon de Nod., concerning the church of Judlibam, for there it is said, that when it cannot be ascertained who presented the last parson or the parson before the last, that then the trial should proceed on the subject of the right and of the property by the very same writ without another. And let the argument at once begin concerning the seysine of the ancestor and concerning the right by descent to the claimant, as if he had been impleaded from the commencement upon the right itself, and let the tenant (according as he shall choose) put himself upon the great assise or defend himself by the duel, and meanwhile if they are willing let them agree upon a clerk, otherwise the collation will devolve to the bishop, and if there be in one and the same vill two domains and different feuds and a single church, and it cannot be

f. 246.

sciri non possit cujus antecessor ultimò præsentavit, ipse obtinebit in cujus feodo sita est ecclesia. Si autem sciri non possit quis ultimò præsentavit, nec in cujus feodo sita fuerit ecclesia, nec haberi possit certitudo de præsentatione, concordēt inter se partes & vicissim præsentent, quia proinde oportebit eos habere æquitatem.

De donatione data vel alienata antequam donator fuerit in possessione præsentandi.

Item esto q̧ quis habeat advocationem ecclesiæ alicujus, & cùm fuerit in possessione præsentandi illam dederit cū tenemēto vel sine in maritagium vel alio modo, & ipse idem, antequam præsentaverit, advocationem illam alicui dederit cum teñto vel sine, & tunc primò contigerit ecclesiam vacare, & ille tertius cui ultimo data fuerit advocatio præsentaverit, & primus donator vel ejus hæres, eodem modo primus donatorius: primus donator vel ejus hæres omnibus aliis p̃feretur in præsentatione per assisam, tum quia primus donatorius nullam seysinam habuerit veram per quam ad alium transferre potuit advocationem, nec secundus donatorius potuit accipere., q̧ primus nō potuit dare nec ad alium transferre, de hac materia (ut supra) & similiter de termino s. M. anno regis H. viii. incipiente ix. in com̃ Bed. de Johanne de Traylie & Priore de Neveham. Assisa ultimæ præsentationis de tertia parte ecclesiæ de Sudmel, ubi prior respondit ad assisam quòd prædictus Johannes præsentare non potuit, q̧ quidam Walterus avus ipsius Johannis qui ultimò præsentavit ad prædictam tertiam partem dedit advocationem illius tertiæ partis cuidam Falcans. de Briante, & ipse illam dedit domui de Neveham, & quia jam Prior cognovit quòd prædictus Walterus fecit ultimam pręsentationem, & quòd prędictus Falcas nunquam præsentavit antequam pręsentationem illam dedit prædictæ domui, consideratum fuit quod prædictus Johannes recuperaret

known whose ancestor last presented, he shall prevail in whose feud the church is situated. But if it cannot be known who last presented, nor in whose feud the church was situated, nor can there be any certainty concerning the presentation, let the parties agree together and present alternately, because it will thereby result to them to have equity.

3. Concerning a donation made or alienated before the donor was in possession of the presentation.

Likewise let it be that some one has the advowson of a church, and when he has been in the possession of the presentation, he has given it with a tenement or without, as a marriage portion or in some other manner, and the very same person before he has presented to it, has given the advowson to some one with or without a tenement, and it has then happened for the first time that the church becomes vacant, and the third party to whom the advowson was last given has presented, and the first donor or his heir, and in the same manner, the first donatory; the first donor or his heir is preferred to all the others in the presentation through an assise, as well because the first donatory had no true seysine through which he could transfer the advowson to another, nor could the second donatory accept what the first could not give or transfer to another. On this matter (as above) and in a similar way in St. Michael's term in the eighth and ninth year of the reign of king Henry in the county of Bedford, concerning John de Traylie and the prior of Newenham. An assise of last presentation concerning the third part of the church of Sudmel, where the prior responded to the assise that the aforesaid John could not present, because a certain Walter the grandfather of John who last presented to the aforesaid third part gave the advowson of that third part to a certain Fulk de Briant, and the latter gave it to the house of Newenham, and because the prior already acknowledged that the aforesaid Walter made the last presentation, and that the aforesaid Fulk never presented before he gave the presentation to the house aforesaid, it was resolved that the aforesaid John should recover his sey-

seysinam suam. Ad hoc etiam facit de termino s. H. anno regis H. ix., & maxime quia primus donatorius nec secundus aliquod habuerunt tenementum in villa, in qua ecclesia fuit sita, ad quod advocatio potuit pertinere. Item ad hoc quòd jam ultimo dicitur facit assisa ultimæ præsentationis in com̃ Norff. de Waltero abbate de Messendene, & Huberto de Burgo de ecclesia de Owelton, ubi idem abbas protulit chartam cujusdam Walteri de la Penne quæ protestabatur

f. 246 b. quòd dedit &c. Sed in fine recordi, quia recognitum fuit q̧ idem Walterus nihil habuit in manerio in quo ecclesia sita fuit, nec aliquis nomine suo nec ipse unquam præsentavit, consideratum fuit q̧ abbas nihil caperet. Item ad hunc ultimum casum facit expressè de termino s. H. año regis H. vi. in com̃ Staff. de Rayñ com̃ Cestriæ & priore de Kenelworth de ecclesia Destoke, ubi ille qui dedit advocationem nullam seysinam habuerit præsentandi, nec aliquod tenementum in villa ubi ecclesia sita fuit. Item ad hoc facit de itinere M. de Pateshul in com̃ Wygorñ anno regis H. v., q̧ si aliquis cui data fuerit advocatio (antequam præsentaverit) dederit, non valet. Item ad hoc facit de termino P. anno regis H. ix. in com̃ Cornub. de Richardo Wyke & priore de Trywardray, assisa ultimæ præsentationis de ecclesia de Wyke, ubi dicitur q̧ non valet donatio facta de advocatione, ubi donator tempore donationis nullam habuerit seysinam de aliqua terra ad quam advocatio potuerit pertinere, nec ille qui dedit nec aliquis antecessor suus nunquam fuit in seysina præsentandi, licet multæ confirmationes capitalium dominorum & etiam episcoporum intervenerint, quia donatio omninò nulla, quasi nec incepta nec per-

sine. To the same effect is a case in St. Hilary's term in the ninth year of king Henry, and chiefly because neither the first nor the second donatory had any tenement in the village, in which the church was situated, to which the advowson could pertain. Likewise to the same effect with what is just said is the assise of last presentation in the county of Norfolk concerning Walter abbot of Messendene and Hubert de Burgh concerning the church of Owelton, where the same abbot produced a charter of a certain Walter de la Penne, which testified that he gave, &c., but at the end of the record, because it was acknowledged that the said Walter had nothing in the manor in which his church was situated, nor had any one in his name or himself ever presented, it was held that the abbot took nothing. Likewise upon this last case, another expressly bears in St. Hilary's term in the sixth year of king Henry, in the county of Stafford, concerning Ranulf earl of Chester and the prior of Kenelworth, concerning the church of Stoke, where he he who gave the advowson had no seysine of presenting, nor any tenement in the vill in which the church was situated. Likewise to the same effect is a case in the iter of Martin de Pateshull in the county of Worcester in the fifth year of the reign of king Henry, that if any one to whom an advowson has been given, gives it away before he has presented, it is not valid. Likewise to the same effect is in Easter term in the ninth year of king Henry, in the county of Cornwall, concerning Richard Wyke and the prior of Trywardray, an assise of last presentation concerning the church of Wyke, where it is said that a donation made of an advowson is not valid, where the donor at the time of the donation had no seysine in any land to which the advowson could pertain, and neither he who gave it nor any ancestor of his was ever in the seysine of presenting, although many confirmations of chief lords and even of bishops had intervened, because the donation was altogether null, as if neither commenced nor completed. Likewise to

f. 246 b.

fecta. Item ad hoc facit de termino P. anno regis H. x. in com̃ Leyc. Assisa ultimæ præsentationis inter Walterum de Kedware & priorem de Sudledhe de ecclesia de Seyle, ubi dicitur quòd prædictus Walterus nihil capere potuit, quia comes de Ferariis qui manerium illud, ad quod advocatio illa pertinuit, dedit prædicto Waltero antequam presentaret. Item ad hoc facit de termino s. M. expressè anno regis H. ix. incipiente x. in comitatu Eborū. Assisa ultime presentationis inter priorem de Lewes & Adam de Novo Mercato de ecclesia de Hecfenur,[1] ubi sic: quòd quidam avus scilicet ipsius A. ex parte matris presentavit ad ecclesiam, & postea dedit manerium cum advocatione in maritagium cum quadam filia sua cuidam. Et ipse antequam ecclesia vacaret, terram ipsam cum advocatione ulteriùs dederit in maritagiū cum quadam filia ipsorum, nec adhuc vacaverit ecclesia tempore istorum, sed tempore heredum suorum tunc primò vacaverit, & predictus Adam tulit assisam ultimæ præsentationis de seysina avi sui prædicti primi donatoris, & per assisam recuperaverit, non obstante donatione: quia primus donatorius nunquam seysinam habuerit præsentandi.

CAP. VI.

1. Cum quis summoneatur quare impedit.

Britton, iv. ch. vi.

Non possunt omnes ad quos pertinet præsentatio agere de seysina propria vel antecessorum suorum in casibus præcedentibus: unde illis qui nunquam præsentaverint, cùm ex quacunque causa acquirendi jus ei[2] competat præsentandi, sive per judicium recuperaverint, quod nunquam habuerint vel habuerint ad vitam vel imperpetuum ex causa donationis vel alio modo,

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[1] Hacfeld, MS. Rawl. C. 159. | [2] "eis," MS. Rawl. C. 160.

the same effect is a case in Easter term in the tenth year of king Henry, in the county of Leicester, an assise of last presentation between Walter de Kedware and the prior of Sudledhe, concerning the church of Seyle, where it is said that the aforesaid Walter could take nothing, because the earl of Ferrers, who had the manor to which the advowson pertained, gave it to the aforesaid Walter before he presented. Likewise to the same effect expressly is a case in St. Michael's term in the ninth and tenth of king Henry, in the county of York. An assise of last presentation between the prior of Lewes and Adam of Newmarket, concerning the church of Hecfenur, where it was thus stated: that a certain grandfather of the said Adam on his mother's side presented to the church, and afterwards gave the manor with the advowson as a marriage portion with a certain daughter of his to a certain person. And before the church become vacant he further gave the land with the advowson as a marriage portion to a daughter of those very persons, and the church had not become vacant during their time, but in the time of their heirs it became for the first time vacant, and the aforesaid Adam brought an assise of last presentation upon the seysine of his aforesaid grandfather the first donor, and recovered by the assise, notwithstanding the donation, because the first donatory never had the seysine of the presentation.

Chapter VI.

1. When a person is summoned by a Quare Impedit.

It is not every one to whom a presentation may belong who can bring an action concerning his own seysine or that of his ancestors in the preceding cases; whence those, who have never presented, when from any cause of acquisition they are entitled to present, or if they have recovered by a judgment what they had never before or had only for life or for ever by reason of a donation or in some other manner, are entitled to a

f. 247. competit remedium, si fuerint impediti quo minus præsentare possent, per breve quod tale est.

2. Breve Quare impedit.

Rex vic. salutem. Quia A. fecit nos securos de clam̃ &c. pone per vadium &c. ad respondendum eidem A. quare impedit eundem A. præsentare idoneam personam ad ecclesiam de M. cujus ecclesiæ advocationem idem A. nuper in curia nostra coram nobis vel coram justiciariis nostris apud Westm̃, vel coram justiciariis nostris ad hoc constitutis recuperavit versus eundem B. vel versus alium talem per assisam ultimæ præsentationis inde inter eos captam, vel per judicium curiæ nostræ, vel alio quocunq; modo, unde idem A. queritur q; prædictus B. injustè & contra coronam nostram (vel) in contemptum curiæ nostræ eum inde impedit, & habeas &c.

3. Quid est impedire.

Et unde videndum est quid sit impedire, ut sciatur differentia inter breve Quare impedit, & Quare non permittit. Impedire autem est ponere pedem in jus alienum, quod quis habet in jure præsentandi, cum quasi seysina, & jure quali quali, quia qui impedit quo minùs quis uti possit seysina sua, vel quasi imponit pedem alteri juri &c. Breve quare impedit. Et ideò locum habet.

4. Differentia inter quare impedit et quare non permittit. Britton, *ib.* § 3.

Si autem nullam omninò habuerit talis præsentator seysinam vel quasi, cùm ex causa donationis vel aliunde competat ei jus præsentandi ratione tenementi quod quis tenuerit ad vitam ex casu aliquo ratione dotis,[1] per legem Angliæ, vel firmario ratione firmæ, vel creditori ratione pignoris, cùm nulla recesserit[2] seysina vel quasi, ponere non potuit quis pedem in jus vel quasi seysinam quam talis priùs nō habuit. Et ideò non habet locum Quare impedit, sed breve

[1] "ratione dotis." The law in respect of dower and advowsons underwent a change in 1259 (43 H. III.), so that this passage was probably written before that year.

[2] "precesserit," MS. Rawl. C. 160.

remedy, if they have been impeded from being able to present by a writ of this kind: f. 247.

2. A writ of Quare Impedit.

The king to the viscount greeting. Since A. has given us security for his claim, &c., put under sureties, &c., [B.] to answer to the said A., why he impedes the said A. to present a suitable person to the church of M., the advowson of which church the said A. has recovered lately in our court held before us or before our justiciaries in Westminster, or before our justiciaries appointed for that purpose, against the said B., or against some other certain person, by an assise of last presentation held between them or by a judgment of our court or in some other way, whereupon the said A. complains that the said B. unjustly and against our crown [or] in contempt of our court impedes him, and have, &c.

3. What is "to impede."

And thereupon we must see what it is "to impede," that the difference may be known between a writ of "Quare impedit" and of "Quare non permittit." But "to impede" is to place your foot on another's right, which he has in the right of presenting with a kind of seysine and right of some kind or other, because he who impedes another from using his seysine, as it were places his foot upon another's right, &c. A writ Quare impedit has accordingly place.

4. The difference between a "quare impedit" and a "quare non permittit."

But if such a presentor has no seysine at all or as it were none, when because of a donation or for some other cause he is entitled to the right of presenting by reason of a tenement which he holds for life from some circumstance by reason of dower through the law of England, or as a lessee by reason of a lease, or as a creditor by reason of a pledge, when no seysine or as it were seysine has taken place, a person could not put his foot upon a right or a kind of seysine which the said person had not before. And therefore a "Quare impedit" has no place, but a writ "Quare non permittit." And the

Quare non permittit. Et proprietarius non permittit uti possidentem suo jure possessionis. Hæc est differentia inter Quare impedit, & Quare non permittit. Hæc dictio impedit componitur de in & pes pedis, & unde revera ille impedit qui nititur intus pedem ponere in jus alienum, ubi nullum jus ei competit, nec proprietatis nec possessionis: sed cùm aliquādo jus haberet illud totū transtulit ad alium quacunq; de causa, sed vel per judicium, cùm fortè aliquando utrūque haberet proprietatis & possessionis, jus possessionis ex quacunq; causa transtulit ad alium qui nondum seysina usus est, & cum quis uti non permittat, competit ei contra proprietarium breve Quare non permittit, cum ratione proprietatis pedem habuerit impositum.

5. Breve, quare non permittit.

Rex vic. salutem. Præcipe tali q justè & sine dilatione permittat talem præsentare idoneam personā ad ecclesiam talem quæ vacat, & ad suam spectat donationem ut dicit, & unde queritur q prædictus talis eum injustè impedit. Et nisi fecerit, & idem talis fecerit te securum &c. tunc sum̃ &c. talem q sit coram justiciariis nostris ad talem locum vel diem ostensurus quare non fecerit, & habeas ibi sum̃ &c. Et unde videtur q ferè redit in idem breve Quare impedit, & Quare non permittit. Si autem talis cùm sum̄onitus fuerit prima die non venerit nec se essoniaverit, aliquando (ante concilium Lateranense ubi nullum currebat tempus contra præsentantes) solent impedientes attachiari per plegios & meliores plegios, & tunc solet omnis solennitas attachiamentorū observari. Nunc autem ex causa & necessitate, oportet maturiùs procedere, quia cùm illud quod aliàs licitum non esset necessitas facit licitum,

Concil.Lat. supr. fol. 240.

proprietor does not admit a possessor to use his right of possession. This is the difference between a "Quare "impedit" and a "Quare non permittit." This expression "impedit" is composed of "in" and pes, pedis, and hence in truth he impedes, who strives to place his foot inside upon the right of another, when he has no right either of property or of possession, but when he has had sometime a right, he has transferred it altogether to another for some cause or other, or even by a judgment, when by chance he had sometime both rights of property and of possession, he has transferred the right of possession for some cause or other to another person who has not yet used the seysine, and when a person does not permit him to use it, he is entitled to a writ against the proprietor of "Quare non permittit," when by reason of his property he has his foot placed upon it.

5. A writ why he does not permit.

The king to the viscount greeting. Enjoin such a person that justly and without delay he permit so-and-so to present a suitable person to such a church which is vacant, and belongs to his donation as he says, and whereof he complains that such aforesaid person unjustly impedes him. And unless he does so and such aforesaid person has given you security, &c., then summon, &c. such person that he be before our justiciaries at such a place and on such a day to show why he has not done so, and have there the summoner, &c. And hence it is seen that the writ "quare impedit" and the writ "quare non admisit" nearly resolve themselves into the same. But if such a person when he has been summoned has not come on the first day, nor has essoined himself, sometimes (before the Lateran Council when no time ran against the presentors) the impeders are accustomed to be attached by sureties and better sureties, and then all the solemnity of attachments is accustomed to be observed. But now from the cause and the necessity, it is incumbent to proceed more early, because since necessity makes that allowable which otherwise was not

f. 247 b. propter temporis cursum, primò distringatur impediens sic, vel q vic. habeat corpus ejus vel quod distringat eum per terras & catalla q manum non apponat vel q faciat eum venire: ut de itinere W. de Ralegh in com̃ Bed: de Huberto de Vallibus in principio rotuli: & hoc provenit non per judicium sed per consilium curiæ ad malitiam eorum reprimendam qui præsentationes malitiosè impediũt ut tempus currat. Si autem ille qui præsentationem impediverit fuerit infrà ætatem, nec habuerit per quod distringi poterit, tunc summoneatur ille in cujus manu fuerit & cujus consilio ductus, q sit & habeat tali die per tale breve.

6. Breve si impediens fuerit infra ætatem.

Rex vic. salutem. Summone &c. & ibi habeas B. qui est infrà ætatem & in custodia sua, & ideò maximè q suo regitur consilio (ut dicitur) ad respondendum C. ut supra. Item videtur quibusdam q advocatus semper sum̃onendus sit & non clericus, quia clericus nihil clamat in advocatione. Sed revera videndum erit utrum clericus impediat vel patronus, poterit enim quilibet ipsorũ impedimentum imponere[1] suo tempore, patronus s. ante judicium, & ante jus[2] præsentandi amiserit, præsentationem[3] de se factæ post judicium insistendo. Et unde clericus sum̃onendus erit principaliter & incidentaliter patronus q sit ad ostendendum quid juris clamet in præsentatione q semel amisit per judicium. Item si patronus qui per judicium amiserit vel cùm nullum jus ei cõpetat ad ecclesiam non vacante [4] præsentaverit, et institutum sum̃oniri faciat, quare impediat præsentare, respondere poterit inprimis q ecclesia sive capella non vacat, quo

Fleta v. c. 26.

Britton, *ib.* § 5.

[1] "apponere," MS. Rawl. C. 159; "opponere," MSS. Glas. et Crewe.

[2] "antequam," MS. Rawl. *id.* et alia plura.

[3] "præsentatione," MS. Rawl. *id* sed vox "clericus," manifeste desideratur ante vocem "præsentatione." Immo linea tota deficit quæ in MS. Reg. 9. E. XV. apparet, ubi legitur, "et clericus post judicium, postquam patronus suum jus præ sentandi amiserit, præsentationi de se factæ post judicium insistendo." *See* Introduction.

[4] "vacantem," MS. Rawl. C. 160.

allowable on account of lapse of time, in the first place let the impeder be distrained upon thus, either that the viscount shall produce his body or shall distrain him by his lands and chattels since he cannot lay his hands upon him or make him come, as in the iter of William de Ralegh in the county of Bedford, concerning Hubert de Vallibus at the commencement of the roll, and this is forthcoming not through a judgment but by the counsel of the court to restrain the malice of those who maliciously impede presentations that the time may expire. But if he who has impeded the presentation is under age, and has nothing upon which a distress can be levied, then let him in whose charge he is and by whose counsel he is guided, be summoned, that he be present and produce him on such a day by a writ of this kind: f. 247 b.

6. A writ if the impeder is under age.

The king to the viscount greeting. Summon, &c. and there produce B. who is under age and in his charge and therefore chiefly because he is governed by his counsel (as it is said) to answer to C. as above. Likewise it seems to some that the advocate and not the clerk is always to be summoned, because the clerk claims nothing in the advowson. But in truth it is to be seen whether the clerk or the patron impedes, for each of them may raise an impediment at his own time, the patron, to wit, before judgment and before he has lost the right of presenting (and the clerk) by insisting after the judgment upon the presentation made of himself, and hence the clerk will have to be summoned principally and incidentally the patron, that he be there to show what right he claims in the presentation, which he has once lost by the judgment. Likewise if the patron, who has lost by the judgment or when he was not entitled by any right, has presented to a church not vacant, and has caused the clerk already instituted to be summoned [to show] why he hinders him to present, he may answer in the first place that the church or chapel is not vacant, in which case the ordinary will

casu erit ordinarius consulendus, & secundùm mandatū suū terminabiť negotiū. Item dicere poterit q̄ nihil juris clamat in advocatione, nec aliquem impedit præsentando, cùm ipse sit in possessione rei, & cùm ecclesia vel capella non vacet. Eodem modo respondere posset patronus de non vacatione, si sum̄onitus esset quare præsentationem impediret tanquam ad ecclesiam vacantem, cùm non vacaret. Cùm autem impediens comparuerit, docere poterit multipliciter q̄ injustè non impediverit, tum quia tenet tenementum, ad q̄ advocatio pertinet, ex alia justa causa acquirendi imperpetuum, vel ad tempus, sine alia exceptione cum advocatione & cum omnibus pertinentiis suis, q̄ quidem multipliciter docere poterit per instrumenta, & aliis pluribus modis, secundùm q̄ superiùs ꝑpendi poterit manifestè. Itē impedit patronus sive advocatus advocatum justè præsentantem multis modis, injustè, ut si contra factum ꝑprium vel antecessorum suorum qui jus suum p̃sentandi dederint vel remiserint præsentanti, vel antecessoribus suis. Item injustè si contra jus com̄une, ubi quis habuerit teñtum ad q̄ ꝑtinet advocatio, sine aliqua exceptione, ad tempus, vel imperpetuum, vel pendente lite donec discussum fuerit de jure, sive placitum fuerit de ipso teñto cum ꝑtinentiis sive tantum de ipsa advocatione. Item injustè, si contra ea quæ ritè acta sunt in curia dñi regis ꝑ judicium vel concordiam & finem factū. Item gravare poterit & vexare clericus clericum injustè post præsentationem à suo patrono evictam instituendum vel jam institutum, ad irritandum ea quæ in curia regis ritè acta sunt, & quibus casibus ad auxilium regis erit recurrendum. Item po-

have to be consulted, and according to his mandate the business will be terminated. Likewise he may say that he claims no right in the advowson, nor does he impede by presenting any one, when he is himself in possession of the thing, and when the church or chapel is not vacant. In the same way the patron may answer as to there being no vacancy, if he should have been summoned why he impedes the presentation as if to a vacant church, when it is not vacant. But when the impeder has appeared he may show in manifold ways that he has not unjustly impeded, as well because he holds the tenement to which the advowson appertains or from some other just cause of acquisition in perpetuity or for a time, without any exception, with the advowson and with all its appurtenances, which indeed he may prove in manifold ways by instruments and in several other ways, according to what may be above understood manifestly. Likewise a patron or an advocate impedes an advocate justly presenting in many ways, unjustly, as if against his own act or the act of his ancestors who gave or remitted to the presentor or his ancestors their own right of presenting. Likewise unjustly, if against the common law, when one has had a tenement to which an advowson pertains, without any exception, for a time or in perpetuity or pending a lawsuit until the right has been decided after discussion or a plea has been heard concerning the tenement itself with its appurtenances or only concerning the advowson. Likewise unjustly, if against what has been duly settled in the court of the lord the king by a judgment or an accord or a fine raised. Likewise a clerk may aggrieve and harass unjustly a clerk who is to be instituted or has been already instituted, after a presentation evicted by his patron, in order to render void those things which have been duly performed in the court of the king, and in which cases recourse must be had to the aid of the king. Likewise a bishop may pend-

terit episcopus pendente litè ante lapsum sex mensium ecclesiam injustè incumbrare, & ideò fieri deberet inhibitio ne incumbraret, vel ne clericum admittet ad præsentationem alicujus, donec placitum in curia dñi regis fuerit terminatum: et maximè ante lapsum sex mensium, ut si assisa ultimæ præsentationis arramata fuerit inter aliquos duos vel alios plures, vel placitum Quare impedit, vel placitum super recto simul & semel, vel aliquod istorum p se, non poterit ordinarius aliquem admittere ad præsentationem alicujus partis, donec placita fuerint terminata, & si cùm super jure fiat contentio et sciri non possit quis eorum ultimò præsentaverit, si autem constiterit de ultima præsentatione, tunc fiat placitum de ipso jure, si ille qui in possessione fuerit præsentandi præsentaverit, tenetur episcopus clericum admittere non obstante aliqua inhibitione. Et si contentio inde habeatur, procedat assisa ultimæ præsentationis, nec impediri debet propter placitum super ipso jure, nec etiam propter placita qualiacunque.

f. 248.

Cap. VII.

1. Forma brevium post seysinam recuperatam.

Cum quis seysinam suam recuperaverit per assisam, statim habeat breve ad episcopum de admittendo idoneam personam ad præsentationem suam in hac forma.

2. Breve episcopo vel ordinario dirigendum, cum quis seysinam recuperaverit per assisam ultimæ præsentationis.

Rex venerabili in Christo patri A. eadem gratia Londoñ episcopo salutem. Sciatis q talis A. prior in curia nostra corā justiciariis nostris apud talem locum, recuperaverit seysinam suam de advocatione talis ecclesiæ (vel sic & melius ut videtur) scilicet seysinam præsentationis suæ ad talem ecclesiam versus talem p assisam ultimę prẹsentationis inde ibi inter eos captā. Et ideò vobis mandamus, q ad prẹsentationem ipsius prioris, idoneā psonā ad eandē ecclesiam admittatis.

ing a suit unjustly incumber the church before the lapse of six months, and therefore an inhibition ought to issue that he should not incumber it, nor should admit a clerk at the presentation of any one, until the plea in the court of the king has been terminated: and chiefly before the lapse of six months, as if an assise of last presentation has been instituted between two or more persons, or a plea of Quare impedit or a plea of right together and at the same time, or any of such pleas by itself, the ordinary will not be able to admit any one to the presentation of any part, until the pleas have been terminated, and if when there is a contention about the right and it cannot be known who last presented, if indeed it has been established concerning the last presentation, and then the plea of right is raised, if he who has been in the possession of the presentation has presented, the bishop is bound to admit notwithstanding any inhibition. And if a contention thereupon is raised, let an assise of last presentation proceed, nor ought it to be impeded on account of the plea about the right itself, nor on account of any other pleas whatever.

f. 248.

Chapter VII.

1. The form of writs after the recovery of seysine.

When a person has recovered his seysine by an assise, let him have immediately to the bishop a writ to admit a fit person to his presentation in the following form:

2. A writ to be directed to the bishop or ordinary when a person has recovered seysine by an assise of last presentation.

The king to the venerable father in Christ A. by the same grace bishop of London greeting. Know ye that a certain A. prior has in our court, before our justiciaries at such a place, recovered his seysine of the advowson of such a church (or thus as it seems better) the seysine of his presentation to such a church against so-and-so by an assise of last presentation thereupon held there between them. And therefore we command you that upon the presentation of that prior you admit a fit person to that

Teste &c. Si verò contingit q recordū debeat in brevi comprehendi, tunc dicatur sic. Rex tali episcopo salutem. Sciatis q cùm assisa ultimę pręsentationis sumonita esset in curia nostra corā justiciariis nostris &c. inter A. querentē et B. deforc. quis advocatus tēpore pacis pręsentavit ultimā personā quę mortua est ad talē ecclesiam, recognitum fuit in eadem curia nostra coram eisdem justiciariis nostris p eandē assisam, q pręedictus B. pręsentavit clericum suum ad eandē ecclesiam, qui ultimò obiit psona in eadē ad pręsentationē ipsius B., & ideò vobis mandamus quòd ad præsentationem pręedicti B. idoneam personam ad eandem ecclesiam admittatis. Teste &c. Si verò quis recuperaverit pręsentationem suam p breve Quare impedit, vel Quare nō pmittit; tunc fiat breve episcopo in hac forma.

f. 248 b.

3. Breve quod episcopus admittat clericum non obstante reclamatione, sed per judicium.

Rex tali episcopo salutem. Sciatis q A. in curia nostra coram &c. per judicium ejusdem curiæ nostræ recuperaverit seysinam suam versus talem de advocacatione talis ecclesiæ. Vel sic: recuperavit p̃sentationem suam ad talem ecclesiam versus talem. Et ideò vobis mandamus q non obstante reclamatione ipsius B., ad præsentationem ipsius A. idoneam personam ad eandem ecclesiā admittatis. Teste &c. Item si altera partium per concordiam præsentationem retinuerit, sive sumonitus fuerit ad assisā Quis advocatus, vel ad breve Quare impedit, vel ad breve Quare non permittit, tunc fiat tale breve. Rex tali episcopo salut. Sciatis q cū assisa ultimæ præsētationis sumonita esset in curia nostra coram &c. inter A. querentem & B. impedientē Quis advocatus &c. ut supra vel sic: ad breve Quare impedit, vel Quare non permittit. Sciatis q cùm A. sumonitus esset in curia nostra coram &c. ad respondendum B. quare impedivit eum injustè præsentare idoneam personam ad ecclesiam de tali loco quæ vacat

church. Witness &c. But if it happens that the record ought to be comprised in the writ, then let it be said thus: The king to such a bishop greeting. Know ye that when an assise of last presentation has been summoned in our court before our justiciaries &c. between A. as plaintiff and B. as disturber, as to what advocate in time of peace presented the last parson, who is dead, to that church, it was recognised in the same court of ours before the said justiciaries by the same assise, that the aforesaid B. presented his clerk to the same church, who was the last parson who died in the same at the presentation of the said B., and therefore we command you that you admit to the same church a fit person at the presentation of the aforesaid B. Witness &c. But if a person has recovered his presentation by a writ of Quare impedit, or of Quare non permittit, then let a writ issue to the bishop in this form:

f. 248 b.

3. A writ that the bishop admit a clerk notwithstanding a reclamation, but by a judgment.

The king to such a bishop greeting. Know ye that A. in our court has recovered his seysine against so-and-so concerning the advowson of such a church. Or thus: has recovered his presentation to such a church against so-and-so; and therefore we command you that, notwithstanding the reclamation of B., you admit upon the presentation of A. a fit person to that church. Witness &c. Likewise if one of the parties has retained the presentation by an accord, or has been summoned to an assise of Who is the advocate, or to a writ of Quare impedit, or to a writ of Quare non permittit, then let there be such a writ: The king to such a bishop greeting. Know ye that when an assise of last presentation has been summoned in our court before &c. between A. complaining and B. impeding Who is the advocate &c. as above; or thus to the writ Quare impedit or Quare non permittit: Know ye that when A. has been summoned in our court before &c. to answer to B. wherefore he unjustly impeded him in presenting a fit person to the church of such a place which is vacant, and of which the said A.

& cujus advocationē sive præsentationem idem B. dicit ad se pertinere tali ratione. Idem A. venit in curia nostra eadem coram præfatis justiciariis nostris & recognovit & concessit eidem B. præsentationē suam ad prædictam ecclesiam. Vel sic: recognovit præsentationem vel advocationem illi⁹ ecclesiæ esse jus ipsius B. & illam remisit & quietum clamavit &c. Et ideò vobis mandamus q ad p̃sentationem ipsius B. ad eandem ecclesiam idoneam ꝑsonam admittatis. Teste &c. Et sciendum q si de vacatione unius ecclesiæ diversa brevia à diversis impetrantur, coram uno justiciario, & diversimodè terminentur & per diversa judicia, ut si unus recuperaverit ꝑ assisam, & alius nihil capere possit ꝑ breve Quare impedit, vel Quare non ꝑmittit, vel quidā p̃sentationi consentiant, vel quidam nihil clamant in p̃sentatione nomine suo sed alieno, & qui p̃sentationi consentiant. Item si assisa capta fuerit ꝑ defaltā & hujusmodi, oportet de omnibus placitis in brevi q episcopo dirigit̃ facere mentionem, ut supra videri poterit paulò ante ꝑ exemplum. Queritur autem inter cætera, quare in brevi de admittendo clericum post captionem assisæ ultimæ præsentationis in modum assisæ, non contineat̃ hæc clausula (non obstāte reclamatione talis) sicut continet̃ in brevi q mitti debet ad episcopū, postquā quis recuperaverit p̃sentationem suam ꝑ breve Quare impedit, vel Quare nō ꝑmittit: responderi poterit et sufficienter q breve Quare impedit, & Quare non ꝑmittit; in se continet certas ꝑsonas & determinatas, inter quas vertit̃ contentio, & inter quas stare possit judicium q non est in assisa ultimæ p̃sentationis, q̇a licet ibi sint certæ ꝑsonæ inter quas vertit̃ contentio, assisa tamen facit ꝑ quolibet de populo tam ꝑ absente quàm ꝑ p̃sente, et tā ꝑ nō nominato in brevi, quàm ꝑ nominato ꝑpter virtutem

says that the advowson or the presentation belongs to him for such reason. The said A. came in our said court before our aforesaid justiciaries, and acknowledged and conceded to the said B. his presentation to the said church. Or thus: acknowledged that the presentation or the advowson of the said church was the right of B., and remitted it and quit-claimed &c.; and therefore we command you that upon the presentation of the said B. you admit a fit person to the said church. Witness &c. And it is to be known, that if concerning the vacancy of one church divers writs are sued out by divers persons before one justiciary and are terminated in divers manners and by divers judgments, as if one has recovered by an assise, and another can take nothing by a writ of Quare impedit or of Quare non permittit, or some consent to a presentation, or some claim nothing in the presentation in their own name but in another's name, and who consent to the presentation. Likewise if an assise has been held by default and of this kind, it is incumbent to make mention of all the pleas in the writ which is directed to the bishop, as may be seen a little before by an example. But it is asked, amongst other things, wherefore in a writ concerning the admission of a clerk after the holding of an assise of last presentation in the manner of an assise this clause, "notwithstanding the "reclamation of so-and-so," is not contained, as it is contained in the writ which ought to be sent to the bishop, after a person has recovered his presentation by a writ of Quare impedit or of Quare non permittit: it may be answered and sufficiently that a writ of Quare impedit and of Quare non permittit contains in itself certain and determinate persons, between whom the contention turns and between whom the judgment may stand, which is not so in an assise of last presentation, because although there are there certain persons between whom the contention turns, the assise nevertheless makes for any one of the people as well absent as present, as well for any one not named in the writ as for one named in

hujusmodi dictionis (quis) quæ distributiva est, & certas psonas non complectiṫ. Et unde non sufficeret dicere (non obstante reclamatione talis nominati in brevi) cū possit reclamare alius quicunq, nō nominatus si assisa faceret p eo. Sed esto q assisa non sit capta in modum assisæ sed in modū juratę, ut si dño apponeṫ charta, vel conventio, vel conditio, vel hm̃odi, tunc dicaṫ, non obstante reclamatione talis q̇a nō diciṫ indeterminatè quis advocatus, ut probaṫ in rotulo de termino s. T. & s. M. año regis H. 3. incipiente 4. in com̃ Oxoñ inter Robertū de Harpd. et Reginaldū de Albo monasterio. Assisa ultimæ pręsentationis, de ecclesia de Harpd. et ita fieri debet (ut videtur) in quolibet judicio ubi assisa nō capiṫ in modū assisę. Item poterit esse alia forma concordię, ubi contentio fuerit p assisam inter plures unū jus habētes quasi unus hęres, p assisam ultimę p̃sentationis, vel p breve Quare impedit, vel Quare non permittit. Si unus ex pluribus consentire voluerit,[1] remanebit præsentatio, et episcopus ecclesiæ providebit, nec poterit sibi vendicare privilegium, ætas, nec dignitas, nec psonarum pluralitas, quia aut omnes cōsentiant aut nullus. Consentire tamen possunt multipliciter, & formetur breve semper secundùm formā consensus, consentire enim poterit unus ex pluribus tali modo, s. q nunquam consentiet in clericū quem participes p̃sentaverint priùs, sed libenter in alium consentiet quā[2] ipsi participes sui eligent & præsentabunt, & tunc fiat breve in hac forma.

f. 249.

4. Ubi sunt participes

Rex tali episcopo salutē. Sciatis q cùm A. sum̃onitus esset in curia nostra coram &c. ad respondendum B. & C. uxori sue, quare ipse impedivit eos pręsentare

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[1] "nolucrit," MS. Rawl. C. 160. | [2] "quem," MS. *id.*

it, on the strength of this expression (any one), which is distributive and does not comprise only certain persons; and hence it would not be sufficient to say (notwithstanding the reclamation of such a person named in the writ) when somebody else may reclaim, who is not named, if the assise should make for him. But let it be that the assise has not been held in the manner of an assise, but in the manner of a jury, as if a charter, or a convention, or a condition, or something of that kind, be opposed to the lord, then let it be said, notwithstanding the reclamation of so-and-so, because it does not say indeterminately what advocate, as is proved on the roll of Trinity term and Michaelmas term in the third and fourth year of king Henry, in the county of Oxford, between Robert de Harpdown and Reginald of the White Monastery, an assise of last presentation concerning the church of Harpdown, and so it ought to be (as it seems) in any judgment where an assise is not held in the manner of an assise. Likewise there may be another form of an accord where there has been a contention by an assise between several persons having one right, as if a single heir, by an assise of last presentation, or by a writ of Quare impedit or of Quare non permittit: if one out of several is unwilling to consent, the presentation shall be stayed, and the bishop shall provide for the church; nor can any thing claim for itself a privilege, neither age, nor dignity, nor plurality of persons, because all must consent or none. But they may consent in manifold ways, and the writ may always be shaped according to the form of the consent, for one out of several may consent in such manner, to wit, that he will never consent to the clerk whom his partners have previously presented, but he will willingly consent to any other, whom his partners shall choose and shall present, and then let the writ be drawn in this form: f. 249.

The king to such a bishop greeting. Know ye that when A. has been summoned into our court before &c., to answer to B. and C. his wife, why he impeded them

4. Where there are partners in

in præsentatione.

idoneā personā ad ecclesiam talem, quę vacat, & cujus ecclesiæ advocationis ipsi B. & C. petūt duas partes. Idē A. venit in eadem curia nostra, & dixit q justè impedivit, quia jus p̃sentandi ad tertiam ptem ptinet ad ipsum, eo q pticeps prædictorum B. & C. Adjecit etiam q nunquam in clericum quē ipsi B. & C. præsentaverant consentiret, eo q ipse minus idoneus fuit ut dicebat, in aliū tamen à primo ab eisdem B. & C. præsentatū (dū tamen idoneus esset) consentiret. Et ideò vobis mandamus, q si prædicti B. & C. in unā personā idoneā consenserint, & illā vobis simul cum prædicto A. cōmuniter præsentaverit, tunc ad præsentationē eorū omnium psonā illā ad eandem ecclesiam admittatis. Si autē in psonā talem idem A. consentire noluerit: ut cōvenit, tunc (non obstante reclamatione ipsius A.) ad pręsentationē ipsorū B. & C. idoneam personā quā ipsi elegerint, ad eandē ecclesiam admittatis. Teste &c. Eodē modo fiat de pluribus participibus si cōsenserint de p̃sentando alternis vicibus successivè, & inseratur in brevi tota forma concordiæ. Si quatuor sorores participes, quarum duæ viros habeāt & duæ non, simul cum viris petierint seysinam præsentanti[1] versus aliquos, & per assisam recupaverint, tunc fiat breve ep̃o in hac forma.

5. Breve de quatuor sororibus quarum duæ habent virum et duæ non.

Rex tali ep̃o salutē. Sciatis q A. & B. uxor ejus C. & D. uxor ejus E. & F. sorores ipsarū B. & D. in curia nostra &c. recuperaverūt seysinam præsentationis suæ versus S. & G. p assisam ultimæ præsentationis inde ibi inter eos captā præsentib9 H. & I. simul cū prædicto G. cōtra assisam illā, et cōcedentib9 iisdē A.

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[1] "præsentandi," MS. Rawl. C. 160.

in presenting a fit person to such a church, which is vacant, and of the advowson of which church B. and C. claim two parts. The same A. came into our court and said that he rightfully impeded them, because the right of presenting to the third part pertains to him, inasmuch as he is a parcener with the aforesaid B. and C. He added also that he would never consent to the clerk whom B. and C. had presented, inasmuch as he was not fit, as he said, nevertheless he would consent to another from the first if presented by the said B. and C. (provided however he was fit). And therefore we command you, that if the aforesaid B. and C. shall consent to the same fit person, and shall have presented him to you, in common with the said A., then upon the presentation of all of them you admit that person to the church. But if the said A. shall be unwilling to consent to such a person, according as it has been agreed, then (notwithstanding the reclamation of the said A.) you should admit upon the presentation of the said B. and C. a fit person, whom they may have chosen, to the said church. Witness, &c. In the same way let it be done with several parceners, if they have consented to present in alternative turns successively, and let there be inserted in the writ the whole form of the accord. If four sisters who are parceners, of whom two have husbands and two have not, have claimed together with the husbands seysine of the presentation against certain persons, and have recovered by an assise, then let a writ issue to the bishop in this form:

the presentation.

5. A writ concerning four sisters, of whom two have husbands and two not.

The king to such a bishop greeting. Know ye that A. and B. his wife, C. and D. his wife, E. and F. the sisters of B. and D., in our court, &c., have recovered seysine of their presentation against S. and G. through an assise of last presentation there held between them, H. and I. being present together with the aforesaid G. against that assise, and conceding to the said A. and

& B. C. & D. E. & F. præsentationē suā ad eādē ecclesiā, et ideò vobis mandam⁹ q̧ ad præsentationē prædictorū A. & C. ratione prædictorū B. & D. uxorū suorū & ad p̃sētationē prædictorū E. & F. idoneā ꝑsonā ad eandē ecclesiā admittatis. Si autē post assisam captā cōvenerit int̃ ꝑtes ꝑ cōcordiā de aliqua pēsiōe augēda de gratia et ordinatiōe ep̃i, tūc fiat breve in hac forma.

f. 249 b.
6.
Breve si concordia fiat.

Rex tali ep̃o vel ejus officiali salutē. Sciatis q̧ post assisā ultĩæ p̃sētationis captā int̃ A. querētē et B. ĩpediētē de tali ecclesia ꝑ justiciarios nostros ad hoc assignatos ꝑ p̃ceptū nr̃m, cōvēit inter eosdē A. & B. in curia nostra corã nobis de eadem ecclesia, s. q̧ prædict⁹ B. recognovit advocationem illius ecclesiæ esse jus ipsius A. salva tñ eidem B. abbati vel priori & successoribus suis quadam annua portione vi. marcarū quàm idem B. & prędecessores sui inde percipere consueverunt, et quàm predictus A. eidem B. recognovit ut idem B. dicit, et quam etiam idem A. augeri desiderat usq; ad c. s. si prędictus B. hæc (salva honestate episcopi) de gratia possit obtinere. Et ideò vobis mandamus (q̧ non obstante reclamatione ejusdem B.) ad pręsentationem ipsius A. idoneam personam ad eandem ecclesiam admittatis. Salva tamen eidem B. dicta portione sex marcarum cū augmentatione prædicta, si illam de gratia vestra & cum honestate possit obtinere. Si quis per judicium recuperet pręsentationem ratione firmæ quàm habuerit de aliquo manerio cum omnibus pertinentiis suis, nulla facta exceptione, tunc fiat breve episcopo in hac forma.

B., C. and D., E. and F. their presentation to the said church, and therefore we command you that upon the presentation of A. and C. in regard of B. and D. their wives, and upon the presentation of the aforesaid E. and F., you admit a fit person into the church. But if after the holding of the assise it has been agreed amongst the parties by an accord concerning the increase of any pension of favour and by the ordinance of the bishop, then let a writ issue in this form:

f. 249 b.

6. A writ, if an accord be made.

The king to such a bishop or his official greeting. Know ye that after holding an assise of last presentation between A. the plaintiff and B. the impeder concerning such a church by our justiciaries assigned to that purpose by our precept, it was agreed between the said A. and B. in our court before us concerning the said church, to wit, that the aforesaid B. acknowledged that the advowson of that church was the right of the said A., saving however to the said B. the abbot or prior and his successors a certain annual portion of six marks; which the said B. and his predecessors have been accustomed to receive therefrom, and which the aforesaid A. acknowledged to the said B. as the said B. says, and which also the said A. desires to increase up to a hundred shillings, if the aforesaid B. can (saving the honesty of the bishop) obtain this by favour. And therefore we command (that notwithstanding the reclamation of the same B.) you admit a fit parson to the said church on the presentation of the said A. Saving however to the said B. the said portion of six marks with the aforesaid augmentation, if he can obtain this of your favour and with honesty. If any one recovers by a judgment a presentation by reason of a lease which he had of a certain manor with all its appurtenances, no exception having been made, then let a writ issue to the bishop in this form:

7. Breve, si judicium ratione firmæ.

Rex tali episcopo salutem. Sciatis q A. in curia nostra coram justiciariis nostris &c. per considerationem ejusdem curiæ nostræ recuperavit seysinam præsentationis suæ ad talem ecclesiam, versus B. ea ratione q prædictus A. habet manerium de N. ad firmam de prædicto B. cum omnibus suis pertinentiis, nulla facta exceptione, vel quibusdam specialiter exceptis, nulla tamen mentione facta de advocatione, sicut patet manifestè per chartam ipsius B. quam idem A. in eadem curia nostra, coram eisdem justiciariis nostris ostendit, & etiam quam idem B. in eadem curia recognovit. Et ideò vobis mandamus (quòd non obstāte reclamatione ipsius B.) ad præsentationem prædicti A. ratione prædictæ firmæ (secundùm q prædictū est) idoneam psonā ad eandem ecclesiam admittatis. T. &c. Si minor infrà ætatem assisam portaverit, & proferantur contra ipsum chartæ antecessorum suorum ad quas ipse infrà ætatem respondere non possit, vel si aliquis contra ipsum proferat breve Quare impedit, & chartam exhibeat in judicio ad quam respondere non possit minor, et ita q de necessitate oporteat placitum remanere usq, ad ætatem, proviso tamen q ei qui est infrà ætatem nihil juris depereat, & ita q de consilio curiæ eligant partes clericum, et cōmuniter præsentent, reservata tamen quadam minima pensione (ut superius dictum est) eat breve ordinario loci in hac forma.

8. Breve de admittendo clerico, ubi partes consentiunt in clericum propter minorem,

Rex tali episcopo salutem. Sciatis q cùm A. qui est infrà ætatem in curia nostra corā justiciariis nostris &c. peteret versus B. advocationem talis ecclesiæ per assisam ultimæ præsentationis ibi inter eos sumōnitam, & tandem convenit inter eos q ipsi idoneam personam cōmuniter præsentarent ad eandem ecclesiam,

7.
A writ if judgment by reason of a lease.

The king to such a bishop greeting. Know ye that A. in our court before our justiciaries, &c., by the opinion of our said court has recovered seysine of his presentation to such a church against B. on these grounds that the aforesaid A. has the manor of N. upon a lease from the aforesaid B. with all its appurtenances, no exception having been made, or certain special exceptions only having been made, no mention having been made of the advowson, as is evident clearly by the charter of the said B. which the said A. showed in the said court of ours before our said justiciaries, and which also the said B. acknowledged in the same court. And therefore we command you that (notwithstanding the reclamation of the said B.) you admit a fit parson to the said church upon the presentation of the said A. by reason of the aforesaid lease (according to what has been said above). Witness, &c. If a minor under age has brought an assise and there are produced against him the charters of his ancestors to which he himself being under age cannot make answer, or if any one brings against him a writ of *quare impedit* and exhibits a charter in judgment to which a minor cannot make answer, and so that of necessity it is incumbent that the plea should be stayed until he comes of full age, provided however that he who is under age lose nothing of his right, and so that with the advice of the court the parties should elect a clerk and present him in common, reserving however some very small pension (as said above), let a writ go to the ordinary in this form:

8.
A writ to admit a clerk, where the parties agree upon a clerk on account of a minor,

The king to such a bishop greeting. Know ye that when A. who is under age claimed in our court before our justiciaries, &c., against B. the advowson of such a church by an assise of last presentation there summoned between them, and it was at length agreed between them that they should in common present a fit person to the said church saving to each his right,

qui non potest ad chartas respondere.

salvo jure utriusq; eorum, cùm idem A. qui nunc est infrà ætatem pervenerit ad ætatem. Et ideò vobis mandamus, q ad præsentationem ipsorum A. & B. salvo jure utriusq; ipsorum, cùm idem A. ad ætatem pervenerit (secūdùm q prædictum est) idoneam personam ad eandem ecclesiam admittatis. T. &c.

9. Alia forma de eodem.

Rex tali episcopo salutem. Sciatis q cùm A. custos filii & hæredis B. sum̄onitus esset in curia nostra coram justiciariis nostris &c. ad respondendū tali abbati Quare impedivit eundem abbatem præsentare idoneam personā ad ecclesiam de N. quæ vacat, et cujus ecclesiæ advocationem idem A. dicebat ad se pertinere ratione dicti heredis: ipse abbas venit in curia eadem, et ostendit chartas antecessoris talis dicti heredis, p quas dicebat jus advocationis ejusdem ecclesiæ ad se ptinere. Tandem verò convenit inter eosdem abbatem & A. de com̄uni consensu q ipsi com̄uniter inter eos clericum eligant, & eundem vobis præsentent, salvo tamen unicuiq; ipsorum abbatis et hæredis jure suo imposterum, tam super possessione q super pprietate, & ita q neutri ipsorum aliquid juris depereat, possessionis vel pprietatis, cùm predictus hæres ad hæreditatem pervenerit. Et ideò vobis mandamus q ad præsentationem prædictorum abbatis et A. idoneam personam ad eandem ecclesiam admittatis, salvo jure cujuslibet, cùm prædictus hæres ad ætatem pvenerit, secundùm q prædictum est. Teste, &c. Et q de com̄uni consensu eligi debet clericus et com̄uniter præsentari propter minorem ætatē hæredis, habetis de termino S. Michaelis, anno regis H. 14. incipiente 15. in com̄ Derby, assisa ultimæ præsentationis de ecclesia de Eltdene. Item aliud breve de eadem materia, ubi præsentatur clericus de communi consensu eorum qui sunt plenæ ætatis, ubi placitum fuit per breve de recto.

f. 250.

when the said A. who is now under age has arrived at full age. And therefore we command that upon the presentation of the said A. and B., saving the right of each of them, when the said A. shall arrive at full age (according to what has been said above), you admit a fit person to the same church. Witness, &c.

who cannot answer to charters.

9. Another form for the same.

The king to such a bishop greeting. Know ye that when A. the guardian of the son and heir of B. had been summoned into our court before our justiciaries, &c., to answer to abbot so-and-so why he impeded the said abbot to present a fit person to the church of N., which is vacant, and of which church the said A. said that the advowson belongs to him by reason of the said heir. The said abbot came into the said court and showed the charters of the ancestor of the said heir, by which he said that the right of the advowson of the said church belongs to him. At length however it was agreed between the said abbot and A. that with their common consent they should choose a clerk in common between them and should present the same to you, saving however to each of them the abbot and the heir his right for the future as well to the possession as to the property, when the heir aforesaid shall have attained full age. And therefore we command you that upon the presentation of the aforesaid abbot and A. you admit a fit person to the said church, saving the right of each, when the aforesaid heir shall have arrived at full age as aforesaid. Witness, &c. And that a clerk ought to be chosen with their common consent, and be presented in common on account of the minority of the heir, you have a case in St. Michael's term in the 14th and 15th years of king Henry in the county of Derby, an assise of last presentation concerning the church of Eltdene. Likewise another writ on the same matter where a clerk is presented with the common consent of those who are of full age, where there has been a plea by writ of right.

f. 250.

10. De clerico admittendo, ubi quis præsentatur de communi assensu plurium, qui sunt plenæ ætatis.

Rex tali episcopo salutem. Sciatis q convenit in curia nostra coram justiciariis &c. inter A. petentem & B. deforciantem de advocatione ecclesiæ de N. cum pertinentiis, unde placitum fuit inter eos in eadem curia, scilicet q prædicti A. & B. idoneam personam eligant ad ipsum & eandē[1] ecclesiam unanimiter pręsentent, salvo jure cujuslibet. Et ideò vobis mandamus q ad præsentationem ipsorum A. & B. (salvo jure cujuslibet secundùm q prædictum est) idoneam ꝑsonam ad eandem ecclesiam admittatis. Teste &c. Item retenta prima forma, si sit tertius qui remittat jus suum de eadem ecclesia, tunc primò dicatur sub una et eadem forma brevis, scilicet.

11. Breve, ubi unus remittit jus suum alteri ex quatuor participibus, et duo consentiunt in eundem.

Rex &c. Sciatis q ita convenit in curia nostra coram &c. inter A. petentem & B. deforciantem de advocatione talis ecclesiæ, unde placitum fuit inter eos &c., s. q prædictus A. remiserit & quiet clamaverit D. et hæredibus suis[2] ipsi B. et hæredibus suis totum jus & clameum &c. Convenit etiam īter eundem A. petentē & C. deforceantem de advocatione ꝑdict ecclesiæ cum pertinentiis, & unde placit fuit inter eos &c., s. q prędicti A. & C. idoneam personam eligant cōmuniter &c. ut supra. Et ideò vobis mandamus (q non obstante reclamatione ipsius B.) ad præsentationem ipsorum A. & C. (salvo jure cujuslibet ut prædictum est) idoneam personam ad eandem ecclesiam admittatis. Teste &c. Si quis impedimentum apposuerit pręsentanti, qui est in seysina manerii qualitercunq, ad quod ꝑtinet advocatio, & similiter ꝑsentat clericum ea ratione, quia dicit se jus habere in manerio, & cū assisa ultimæ præsen-

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[1] "eligant et ipsum ad eandem," MS. Rawl. C. 160.

[2] "D. et hæredibus suis," omitted M.S. Reg. 9. E. xv.

The king to such an one greeting. Know ye that it was agreed in our court before our justiciaries, &c., between A. as plaintiff and B. deforcing him from the advowson of the church of N. with its appurtenances, whence it was pleaded between them in the same court, to wit, that the aforesaid A. and B. should choose a fit person and present him unanimously to the said church saving the right of each. And therefore we command you that upon the presentation of the said A. and B. (saving the right of each as aforesaid) you admit a fit person to the same church. Witness, &c. Likewise the first form having been retained, if there be a third party who remits his right to the same church, then let it be said in the first place under the same form of the writ, to wit:

10. Concerning the admission of a clerk, when a person is presented by the common assent of several who are of full age.

The king, &c. Know ye that it has been so agreed in our court before &c., between A. the plaintiff and B. the deforcer, concerning the advowson of such a church, whereof there was a plea between them, &c., to wit, that the said A. has remitted and quit-claimed to the said B. and his heirs all the right and claim, &c. It is also agreed between the said A. the plaintiff and C. the deforcer, concerning the advowson of the aforesaid church with its appurtenances, and whereof there was a plea between them, &c., to wit, that the aforesaid A. and C. should choose a fit person in common, &c., as above. And therefore we command you that (notwithstanding the reclamation of the said B.) at the presentation of the said A. and C. (saving the right of each as aforesaid) you admit a fit person to the same church. Witness, &c. If any one has raised an impediment to the presentor, who is in seysine in any way whatever of the manor, to which the advowson appertains, and in like manner presents a clerk on the ground, that he says that he has the right in the manor, and when an assise of last presentation or a judgment makes

11. A writ, where one remits his right to another out of four parceners, and two agree upon the same person.

tationis vel judicium faciat p̲ eo qui est in seysina, fiet ep̃o breve in hac forma.

12. Cum quis præsentaverit ad ecclesiam, antequam recuperaverit manerium, ad quod pertinet advocatio. f. 250 b.

Rex tali ep̃o salutem. Ostensum est nobis ex parte A. q̧ cum ipse teneat tale manerium cum advocatione ecclesiæ & cum omnibus aliis pertinentiis suis, & B. qui manerium illud in curia nostra &c. clamat ut jus suum vobis clericum suum p̃sentaverit ea ratione, q̧ dicit se jus habere in manerio illo, licet nihil habeat in seysina de eodem manerio, nec de aliquibus ejusdem manerii p̲tinentiis, sicut idem B. in cur̃ nr̃a nuper recognoverit, p̃sentationem p̃dicti A. impedit & injustè. Et quia constat nobis tum p̲ recognitionē ipsius B. tū p̲ hoc q̧ petit maneriū illud ut jus suum cum p̲tinentiis suis, q̧ idem B. nullam habet inde seysinam, vobis mandamus (q̧ non obstante reclamatione ipsius B.) ad præsentationem ipsius A. idoneam p̲sonam ad eandē ecclesiam admittatis. Teste &c. Quòd si episcopus ad tale mandatum clericum præsentatum minimè admiserit, fiat ei aliud breve in hac forma.

13. Si episcopus non admiserit clericum ad mandatum regis.

Rex tali episcopo salutem. Satis recolimus vobis alias dedisse in mandatis, q̧ nō obstante reclamatione B. ad præsentationem A. idoneā p̲sonam ad talē ecclesiam (quæ vacat) admitteretis, cujus ecclesiæ advocationem idem A. in curia nostra nuper recuperaverit versus eundē B. p̲ assisam ultimæ præsentationis &c. p̲ judicium ejusdem curiæ nostræ. Et super hoc ostensum est nobis ex parte ipsius A. q̧ idem B. præsentationi ipsius A. impedimentum opposuit ea ratione, q̧ idem B. in curia nostra corā &c. manerium illud ad q̧ advocatio illa p̲tinet clamat ut jus suum, & quia idē B. manerium illud adhuc nondum recuperavit, nec

for him who is in seysine, let there issue to the bishop a writ in this form:

12. When a person has presented to a church before he has recovered the manor, to which the advowson appertains.

f. 250 b.

The king to such a bishop greeting. It has been shown to us on the part of A. that when he holds such a manor with the advowson of the church and with all its appurtenances, and B. who claims that manor in our court, &c. as his right, has presented to you his clerk on the ground that he says that he has the right in that manor, although he has none of the seysine of that manor nor of any of the appurtenances of the same manor, as the said B. has recently acknowledged in our court, he impedes the presentation of the said A. and unjustly. And because it is evident to us as well by the acknowledgment of the said B. as by this circumstance that he claims that manor as his right with all its appurtenances, that the said B. has no seysine thereof, we command you that (notwithstanding the reclamation of the said B.) you admit a fit person to the said church upon the presentation of the said A. Witness, &c. But if the bishop upon such a mandate has not admitted the clerk so presented, let there issue to him a writ in this form:

13. If the bishop has not admitted a clerk upon the king's mandate.

The king to such a bishop greeting. We well recollect that we have issued a mandate on another occasion, that notwithstanding the reclamation of B. you should admit a fit person to such a church which is now vacant on the presentation of A., of which church A. has lately recovered the advowson in our court against the said B. by an assise of last presentation, &c. by the judgment of our said court. And upon this subject it has been shown to us on the part of the said A. that the said B. has opposed an impediment to the presentation of the said A. on this ground, that the said B. claims in our court before, &c. as his right, the manor to which that advowson appertains, and because the said B. has not as yet recovered that manor nor any of its appur-

aliquid de pertinentiis suis, et advocatio illa sit de ejus pertinentiis, vobis mandamus, q̧ non obstāte reclamatione ipsius B. &c.

14. De prohibitione facienda judicibus, si clericus alium clericum implacitaverit.

Si clericus ab eo præsentatus qui judiciū amiserit clericū præsentatū ab eo qui jus præsentandi evicit in causam traxerit coram quibuscunq̧ judicibus, ad impediendum ea quæ in curia domini regis ritè acta sunt, fiat judicibus prohibitio, nec procedant per tale breve.

Cap. VIII.

1. Prohibitio si clericus ab eo implacitatus[1] qui amisit, implacitaverit clericum ejus, qui per judicium recuperaverit.

Glanville, l. ii. c. 13.

Rex tali & conjudicibus suis salutem. Ostensum est nobis ex parte A. q̧ cùm aliquando in curia nostra coram justiciariis nostris &c. arramasset versus C. assisam ultimæ præsentationis, quis advocatus tempore pacis &c. ad ecclesiam talem, et idem B. non dediceret, quin clericus qui ultimò obiit persona in eadem ecclesia præsentatus esset per ipsum A. & ad præsentationē suam admissus, & unde in eadem curia nostra consideratum fuit q̧ prędictus A. in seysina sua remaneret, et ita q̧ ad mandatum nostrum et ad præsentationem suam episcopus loci clericum admitteret, & admisit quendam C., D. quē prædictus B. qui præsentationem illam amisit aliquando præsentaverit, prædictum C. coram vobis trahat in placitum de eadem ecclesia autoritate literarum domini papæ. Et si idem B. corā vobis obtineret in causa memorata, irritare possent[2] ea quæ in curia nostra ritè sunt acta, & cùm hoc esset manifestè contra coronā & dignitatem nostram, vobis mandam⁹ q̧ in causa illa non p̧cedatis de cætero, propter q̧ ad vos nos capere debeamus.[3] Teste &c. Item aliud breve de eadem materia.

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[1] "præsentatus" seems to be required by the text instead of "implacitatus."

[2] "posset," MS. Rawl. C. 160.

[3] "propter quod ad nos capere " debeamus," MS. Crewe.

tenances, and that advowson is one of its appurtenances, we command you that notwithstanding the reclamation of the said B., &c.

14. Of issuing a prohibition to the judges, if the clerk has impleaded another clerk.

If the clerk, presented by him who has lost the judgment, has dragged into a suit before other judges the clerk presented by the party, who has won the right of presentation, in order to impede the proceedings which have been duly carried out in the court of the king, then let there issue to the judges a prohibition, and let them not proceed upon such a writ.

Chapter VIII.

1. A prohibition, if a clerk presented by him who has lost, has impleaded the clerk of him who has recovered by a judgment.

The king to so-and-so and his associate justiciaries greeting. It has been shown to us on the part of A. that when he sometime instituted an assise of last presentation in our court before our justiciaries, as to what advocate in the time of peace, &c. to such a church, and the said B. did not gainsay that the clerk who last died parson of the said church had been presented by the said A., and had been admitted on his presentation, and thereupon in our said court it was resolved that the said A. remained in his seysine, and so that upon our mandate and at his presentation the bishop of the place should admit his clerk, and he has admitted a certain C. and D., whom the aforesaid B. who lost the presentation, has sometime presented, drags the aforesaid C. before you into a plea concerning the same church by the authority of letters of the lord pope. And if the said B. should prevail before you in the cause mentioned, he may render void those things which were duly conducted in our court, and since this would be manifestly against our crown and dignity, we command you that in this cause you do not proceed, inasmuch as we ought to take it unto ourselves. Witness, &c. Likewise another writ on the same matter.

2. De prohibitione, dum quis fuerit infra ætatem.

Rex talibus judicibus salutem. Prohibemus vobis ne teneatis placitum coram vobis in curia Christianitatis de advocatione talis ecclesiæ et de tali ecclesia de cujus advocatione nuper placitum fuit in curia nostra coram nobis &c., inter A. de N. querentem vel petentem & B. custodem C. filii & hæredis talis, impedientem ratione talis juris q idem B. dicebat eundem C. habere in advocatione illa. Et unde inter eosdem A. & B. in eadem curia nostra convenit coram nobis, ita q uterq, illorum consensit in talem clericum eo q placitum terminari non potuit, nec res in judicium deduci, cùm prædictus C. (de quo dicitur quòd jus habet in advocatione illa) adhuc sit infrà ætatem, quia si placitum illud coram vobis in curia Christianitatis procederet, idem C. de advocatione illa dum sit infrà ætatem posset damnum incurrere, & placita de advocationibus spectant ad coronam & dignitatem nostram. Teste &c. Qui verò, si ad talem prohibitionem desistere noluerint, attachientur, vel episcopus habeat eos cùm laicum feodum non habuerint, ut infrà de prohibitionibus pleniùs. Si quis semel per assisam seysinam præsentandi recuperaverit & ille versus quem recuperaverit petere inceperit advocationem per breve de recto, et pendente placito inceperit iterum vacare ecclesia, et uterq, ipsorum præsentaverit, ille præferri debet qui ultimò præsentavit, & fiat breve ad episcopum hac forma.

f. 251.

Cum quis per assisam recuperaverit, et postea, cum fuerit implacitatus per breve de

Rex tali episcopo salutem. Ostensum est nobis ex parte A. quòd cùm ipse nuper in curia nostra &c. recuperasset præsentationē suam ad ecclesiam talem versus B. per assisam ultimæ præsentationis inde ibi inter eos captam, & clericus ad præsentationem suam admissus esset ad ecclesiam illam ad mandatum nostrū, & idem B. cùm jam incepit placitare per breve de

2. Of a prohibition as long as a person shall be under age.

The king to such judges greeting. We prohibit you not to hold a plea before you in the court of Christianity concerning the advowson of such a church and concerning such a church concerning the advowson of which there has lately been a plea in our court before us, &c. between A. de N. complaining or claiming, and B. the guardian of C. the son and heir of so-and-so impeding, by reason of such a right which the said B. asserted that the said C. had in that church. And whereupon it was agreed between the said A. and B. in our said court before us, so that each of them consented to a certain clerk, inasmuch as the plea could not be terminated, nor the matter brought into judgment, since the aforesaid C. (concerning whom it is said, that he has the right in that advowson) is still under age, because if that plea should proceed before you in the court of Christianity, the said C. may incur damage concerning that advowson, whilst he is under age, and all pleas concerning advowsons concern our crown and dignity. Witness, &c. Who indeed, if upon such a prohibition they are unwilling to desist, let them be attached, or let the bishop produce them when they have no lay feud, as below concerning prohibitions more fully. If any person shall have once recovered by an assise seysine of a presentation, and he, against whom he has recovered it, shall begin to claim the advowson by a writ of right, and whilst the plea is pending the church has begun again to be vacant, and each of them has presented, he ought to be preferred who presented on the last occasion, and let a writ issue to the bishop in this form.

f. 251.

3. When a person has recovered by an assise, and afterwards, when he has been impleaded with a writ

The king to such a bishop greeting. It has been shown to us on the part of A. that when he lately in our court, &c., had recovered his presentation to such a church against B. by an assise of last presentation held thereon there between them, and a clerk upon his presentation had been admitted to that church upon our mandate, and the said B. when he has already begun to

recto, incipiat ecclesia vacare.

recto super ipsa[1] proprietate, et contigerit illam, ecclesiam iterum vacare pendente placito super recto, idem B. ratione juris quod dicit sibi competere, cùm nullum adhuc sciverit,[2] clericum suum præsentat ad ecclesiam memoratam ut præsentationem ipsius impediat, de quo constat q̧ sit in possessione præsentandi. Et ideò vobis mandamus (q̧ non obstante præsentatione & reclamatione ipsius B. nec etiam prohibitione nostra si quam habueris, ne clericum admittatis donec placitū super recto determinetur) ad præsentationem ipsius A. idoneam personam ad eandem ecclesiam admittatis, nisi fortè sit aliquis alius à prædicto B. qui præsentationi ipsius A. legitimum impedimentum opponat. Teste &c.

Cap. IX.

1. Breve de summonendo episcopum, qui ad mandatum domini regis clericum admittere recusavit. Britton, iv. ch. vi. § 7.

Si, cùm episcopus vel alius ordinarius regiū suscepit mandatum de admittendo clericum ad ecclesiam, clericum non admiserit, ad quærelam patroni presentantis sum̄oneatur episcopus, q̧ sit coram justiciariis ad ostendendum quare non admiserit per tale breve. Rex vic. salutem. Si A. fecerit te securum de clamore suo ꝓsequendo, tunc sum̄oneas per bonos sum̄onitores talem episcopum, q̧ sit coram justiciariis nostris tali loco, tali die, ostensurus quare ad præsentationē ipsius A. non admisit idoneam personam ad mandatū nostrū, ad talem ecclesiam, cujus ecclesiæ advocationem predictus A. in curia nostra coram eisdem justiciariis nostris recuperaverit versus B. per judicium ejusdem curiæ nostræ, vel ꝑ finē inter eos factum, vel per assisam ultime præsentationis inter eos captam, vel alio quocunq; modo, et habeas ibi sum̄onitores et hoc breve.

f. 251 b.

[1] "super ipsa" down to "com-" "petere," omitted MSS. Crewe et Reg. 9, E. xv. "super ipsa" down to "super recto," omitted MS. Rawl. C. 160.

[2] "adhuc habuerit," MS. Crewe. "adhuc evicerit," Reg. 9. E. xv.

plead by a writ of right about the property itself, and it has happened that the church is again vacant pending the plea about the right, the said B. by reason of the right which he says belongs to him when as yet he has gained none, presents his clerk to the church above mentioned that he may impede the presentation of him, respecting whom it is clear that he is in possession of the presentation. And therefore we command you that (notwithstanding the presentation and reclamation of the said B., and also notwithstanding our prohibition, if you have any, not to admit a clerk until the plea about the right is determined) you admit a fit person to the same church upon the presentation of the said A., unless there be some one else than the aforesaid B. who opposes a legitimate impediment to the presentation of the said A. Witness, &c.

of right, the church begins again to be vacant.

Chapter IX.

1. A writ for summoning a bishop, who upon the mandate of our lord the king has refused to admit a clerk.

If when the bishop or other ordinary has received the royal mandate concerning the admission of a clerk to a church, he has not admitted him, at the complaint of the patron presenting him let the bishop be summoned, that he be before the justiciaries to show wherefore he has not admitted him, by a writ of this kind: The king to the viscount greeting. If A. has given you security for pursuing his claim, then summon by good summoners such a bishop, that he be before our justiciaries at such a place on such a day, to show wherefore upon the presentation of the said A. he has not admitted a fit person at our mandate to such a church, of which church the aforesaid A. has recovered the advowson in our court before our said justiciaries against B. by a judgment of our said court, or by a fine made between them, or by an assise of last presentation held between them, or in some other manner, and have there present the summoners and this writ. Witness,

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Teste &c. Aliud bře de eodem. Rex vic. salutem. Si A. fecerit te securum &c. tunc suīmoneas talem episcopum q sit ostensurus &c. ut supra, idoneam personam ad ecclesiam de N. quæ vacat, ut dicitur, desicut idem A. seysinam advocationis ejusdem ecclesiæ coram justiciariis nostris ad hoc assignatis recuperaverit per assisam ultimæ præsentationis, versus B. inde ibi inter eos captam, et habeas ibi suīmonitores &c. Idem de eodem, s. ubi manerium aliquod datum sit in maritagiū cum aliqua filia alicujus cum advocatione & aliis pertinentiis suis, & cùm ecclesia vacaverit, opponat impedimentum donator pręsentationi donatorii, et eo in curia domini regis discusso, cùm semel mandatum sit episcopo vel suis officialibus quòd ad præsentationem donatorii clericum admittant, & ipsi nihil inde fecerint, suīmoneatur episcopus per tale breve.

2. Si pluries mandatum fuerit officialibus.

Rex vicecom̄ salutem. Suīmoneas per bonos suīmonitores talem episcopum quòd sit coram &c. ad respondendum A. quare ad præsentationem suam non admittat idoneam personam ad talem ecclesiam sicut semel officialibus suis & secundò eidem episcopo mandavimus, cujus ecclesiæ advocationem B. nuper in curia nostra &c. recognovit et concessit eidem A. in maritagium cum filia sua tali ut pertinet ad tale manerium, quod idem B. dederit eidem A. priusquam idem B. clericum suum ad eandem ecclesiam pręsentasset, et per quam præsentationem idem episcopus clericum ipsius A. ad eandem ecclesiam differt admittere, ut idem A. dicit. Et habeas ibi summonitores. Teste &c.

3. Si episcopus fecerit defaltam.

Episcopus cùm suīmonitus fuerit venit aut non venit, nec per se nec se excusat per nuntium, nec per essoniatorē, quo casu procedatur ad defaltam, et attachie-

&c. Another writ concerning the same. The king to the viscount greeting. If A. has given you security, &c., then summon such a bishop that he be there to show, &c., as above, a fit person to the church of N. which is vacant, as he says, since the said A. has recovered by an assise of last presentation against B. held thereon there between them the seysine of the advowson of the said church, and have there present the summoners, &c. The same concerning the same, to wit, when a certain manor has been given as a marriage portion with a daughter of some one with the advowson and the other appurtenances of it, and when the church has become vacant, the donor has raised an impediment to the presentation of the donatory, and that having been discussed in the court of the lord the king, when a mandate has once been sent to the bishop or to his officials that upon the presentation of the donatory they should admit the clerk, and they have done nothing thereupon, let the bishop be summoned by a writ of this kind:

2. If a mandate has been sent more than once to the officials.

The king to the viscount greeting. Summon by good summoners such a bishop that he be before, &c. to answer to A. wherefore upon his presentation he does not admit a fit person to such a church as we have once sent our mandate to his officials and a second time to the bishop, of which church B. has lately acknowledged in our court and conceded the advowson to the said A. as a marriage portion with so-and-so his daughter, as it appertains to such a manor, which the said B. gave to the said A. before the said B. presented his clerk to the said church, and through which presentation the said bishop delays to admit the said clerk to the said church, as the said A. says. And have there present the summoners, &c. Witness, &c.

3. If the bishop has made default.

The bishop when he has been summoned either comes or does not come, neither makes he by himself or by a messenger or by an essoin any excuse, in which case

tur, ut infrà de attachiamentis, et omnis soleñitas et ordo attachiamentorum observetur, nec erit dilatio periculosa prȩsentato nec præsentanti, quamvis sumptuosa, cùm post judicium in curia domini regis redditum, non currit tempus sex mensium. Si autem episcopus se essoniaverit, bene jacet.

4. Cum episcopus comparuerit.

Cùm autem venerit, aut prȩtendit rationem sufficientem quare præsentatum non admisit, quo casu indemnis remanebit. Si autem minùs sufficientem vel omninò nullam, in misericordia domini regis remanebit. Minus sufficientem, ut si dicat quòd prȩsentatum non potuit admittere propter appellationem, quam clericus illius qui amisit interposuit. Et illa ideò minùs sufficiens est, quia per literas domini regis constare potuit episcopo, quòd ille qui appellantem prȩsentavit, nihil juris habuit in prȩsentatione. Sufficere autem videt̃, ut si dicat episcop⁹ q̧ non sit ei imputandum q̧ clericum non admisit, sed ipsi prȩsentanti: quia primò prȩsentavit A. et postea mutata voluntate præsentavit B., contra quem idem A. appellavit et prosecutus est appellationem suam, & contra talem appellationem non potuit admittere prædictum B. secundò prȩsentatum. Item dicere poterit q̧ ecclesia non vacat, nec multo tempore vacavit ad prȩsentationem ipsius talis, quia si assisa inde capta fuit, capta fuit per defaltam, vel in absentia veri patroni qui nihil dicere potuit contra assisam. Item concedere potuit q̧ vacavit, et quòd quidam præsentavit publicè, & q̧ facta fuit inquisitio post longum intervallum cum debita solennitate, nec fuit aliquis qui se opponeret præsentationi, præsentando nec appellando in ipsa præsentatione talis, nec in inquisitione, nec in ipsa institutione. Et quo casu,

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proceedings go on to a default, and let him be attached, as below concerning attachments, and let all the solemnity and order of attachments be observed, nor shall the delay be perilous to the party presented nor to the presenter, although it be expensive, since after the judgment returned in the court of the lord the king, the time of six months does not run. But if the bishop has essoined himself, it lies well.

4. When the bishop has appeared.

When, however, he has come, he either holds out a sufficient reason wherefore he has not admitted the party presented, in which case he will remain indemnified. But if he has alleged an insufficient reason or none at all, he will remain at the mercy of the king. Insufficient, as if he should say that he could not admit the party presented on account of the appeal which the clerk of him who has lost [the suit] has interposed. And that is insufficient for that reason, because through the letters of the lord the king it could be clear to the bishop, that he who presented the appellant, had no right in the presentation. But it seems to be sufficient, as if the bishop should say that it is not to be imputed to him that he has not admitted the clerk, but to the party presenting him; because he first presented A., and then having changed his intention he presented B., against whom the said A. appealed and prosecuted his appeal, and against such an appeal he could not admit the aforesaid B. the second presentee. Likewise he may say that the church is not vacant, or it has not been vacant long for the presentation of the said so-and-so, because if an assise has been held thereon, it has been held by default, or in the absence of the true patron who could say nothing against the assise. Likewise he may concede that it has been vacant, and that some one has presented publicly, and that an inquisition has been held after a long interval with due solemnity, nor was there any one who opposed the presentation by presenting or by appealing upon the presentation of so-and-so, nor upon the inquisition nor upon the institution. And in which case let the

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doceat querens contrarium si possit, s. quòd dolosa fuit præsentatio et clandestina inquisitio et institutio nec solennis, vel etiam doceat se semper reclamasse et appellasse in præsentatione, et in inquisitione et in ipsa institutione, et inde habeat probationes et sectam sufficientem. Et si episcopus contra hoc se defendere non possit, deliberet ecclesiam vel conquerenti satisfaciat alio modo. Et ista ad præsens sufficiant exempli causa.

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plaintiff prove the contrary, if he can, to wit that the presentation was deceitful and the inquisition and the institution clandestine and not solemn, or even let him show that he has always reclaimed and appealed against the presentation, and at the inquisition, and at the institution itself, and let him produce thereon his proofs and his sufficient suite. And if the bishop cannot defend himself against this, let him deliver the church or satisfy the plaintiff in some other manner. And these things may suffice for the present by way of example.

TRACTATUS TERTIUS
LIBRI QUARTI
IN QUO TRACTATUR
DE ASSISA MORTIS ANTECESSORIS.[1]

CAP. I.

1. De prima seysina post mortem antecessoris.

Supradictum est de seysina propria, cùm quis injustè disseysitus fuerit per violentiam omninò, vel impeditus quo minùs commodè uti possit seysina, qualiter restituatur: nunc autem dicendum de seysina aliena et propinqua, s. alicujus antecessoris præmortui, qualiter hæredibus propinquioribus acquiratur. De iis, de quibus antecessor obiit seysitus ut de feodo quacunq; ratione vel quocunque titulo, sive consistant in corpore sive in jure, hæres propinquior eandem habebit seysinam quam antecessor habuit, et si plenæ ætatis extiterit, et vacuam possessionem invenerit, si tempore mortis antecessorum[2] dominus præsens non fuerit, bene licebit ei se ponere in seysinam, dum tamen paratus sit facere domino suo capitali quod de jure & secundùm legem terræ facere debebit, cùm ipsum ad dominum recognoverit. Eodem modo, si tempore mortis antecessoris in seysina inventus fuerit cum ipso antecessore cujuscunq; ætatis extiterit, & ad hæredem recognitus fuerit, & dominorum poterit resistere violentiæ, si nitantur eum ejicere cùm plenæ ætatis extiterint.[3]

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[1] "Hic incipit tertius tractatus "libri quarti de assisa mortis ante"cessoris," MS. Rawl. C. 160.

[2] "antecessoris," MS. Rawl. C. 160. Reg. 9. E. xv.

[3] "extiterit," MSS. eadem.

THE THIRD TREATISE

OF

THE FOURTH BOOK

WHICH TREATS OF

AN ASSISE OF MORTDANCESTER.

Chapter I.

1. Of the first seysine after the death of an ancestor.

We have spoken above of one's own seysine, when one has been unjustly disseysed by violence altogether or only impeded from using conveniently the seysine, how it should be restored: now indeed we must speak of the seysine of another and a near relative, to wit, of some ancestor predeceased, how it is acquired for the next heirs. Of those things, of which an ancestor died seysed as of a feud in whatever manner and by whatever title, whether they consist in a substance or in a right, the next heir shall always have the same seysine as his ancestor had, and if he should be of full age and has found the possession vacant, if at the time of the death of the ancestor the lord was not present, it will be allowable for him to put himself into seysine, provided however he is prepared to do towards his chief lord what of right and according to the law of the land he ought to do, when he has acknowledged him as his lord. In the same manner, if at the time of the death of the ancestor he has been found in seysine with the ancestor himself, of whatever age he may be, and he has been acknowledged as the heir, he will be able to resist the violence of the lords, if they endeavour to eject him, when they are of full age. But if they be under age,

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Si autem minoris ætatis, tunc non priùs habebit dominus custodiam terrarum vel corporis quàm ceperit homagium hæredis. Si autem dominus capitalis tales, cùm in seysina fuerint & hæredes, contra eorum voluntatem ejecerit, sive ipsos hæredes recognoverit sive non, per assisam novæ disseysinæ seysinam suam rehabebunt, cùm plenæ ætatis extiterint. Si autem minor ejectus fuerit, habebit duo remedia, assisam videlicet novæ disseysinæ, vel mortis antecessoris, quamcunq; istarū elegerit. Et si in una defecerit, regressum habebit ad aliam, ordine tamen observato. Et cùm tales hæredes ita in possessione extiterint, non denegabitur domino capitali simplicem habere seysinā, ut pro dño recognoscatur, ita tamē q inde nihil capiat, nec aliquē inde à possessione amoveat contra ipsorum hęredum voluntatem. Et quamvis à quibusdam dicat̃ q cápitalis dominus debeat habere primam seysinam post mortē tenentis sui, fallit tamen in hoc casu, quia primam habere non possit, licet habere possit cum hæredibus ut dictum est communem. Si autem sit hęres apparens unus vel plures unum jus habentes, et de quibus dubitetur an sint hęredes vel non, vel ad hæredes non recognoscantur, statim sibi perquirant per assisam mortis antecessoris & doceant se esse hæredes per assisam. Si autem dubitetur an præsentes, qui se faciunt hæredes, hęredes sint vel non, quia hæres & frater antenatus profectus fuit in Terram Sanctam fortè, et nesciatur si vivus sit vel non, fiat præsentibus seysina p dñm capitalem & per assisam sub tali conditione, q si antenatus redierit, q ei restituatur hæreditas sine placito, cùm bene constat q talis sit hæres si vivus extiterit. Si autem dñs capitalis primam seysinam habuerit, duo contendant de hæredibus, quorum quilibet se gerat pro

f. 252 b.

Britton, iii. ch. vi. § 4.

then the lord shall not have the custody of the lands or of the person before he has taken the homage of the heir. But if the chief lord has ejected so-and-so against their will, when they were in seysine and were heirs, whether he has acknowledged them as heirs or not, they shall regain their seysine by a writ of novel disseysine, when they shall be of full age. But if a minor has been ejected, he shall have two remedies, to wit, an assise of novel disseysine, or an assise of mortdancester, which- f. 252 b. ever of these he shall choose. And if one shall fail him, he shall have recourse to the other, observing, however, the order. And when such heirs shall have been in possession, it shall not be denied to the chief lord to have a simple seysine that he should be acknowledged as lord, so however that he shall therefrom derive nothing, nor shall remove any one from his possession against the will of the heirs themselves. And although it be said by some that the chief lord ought to have the first seysine after the death of his tenant, it fails, however, in this case, because he cannot have the first, although he may have a common seysine as it is said with the heirs. But if there be an heir apparent, one or several having one right, and concerning whom it is doubted whether they are heirs or not, or they should not be acknowledged as heirs, let them immediately claim for themselves by an assise of mortdancester, and show by the assise that they are heirs. But if it be doubted whether the present persons, who make themselves out to be heirs, are heirs or not, because the heir and elder brother has gone perchance on a journey to the Holy Land, and it is unknown whether he is alive or not, let seysine be made to those who are present by the chief lord and by the assise under this condition, that if the elder born shall return, that the inheritance shall be restored to him without a suit, since it is well known that he is heir, if he be alive. But if the chief lord has had the first seysine, and two contend as heirs, of whom each holds himself

hærede, s. postnatus cum primogenito, legitimus cum bastardo, nulli eorum facienda erit hæreditatis restitutio, antequam constiterit quis eorum sit hæres propinquior vel justior, quod si fecerit, & hæredi non legitimo seysinam fecerit, & homagium suum ceperit, si contra petitionē legitimi hæredis voceť ad warrantum, warrantizare teneť de jure, licet warrantizationi sic respondeat q homagiū talis ceperit salvo jure cujuslibet, quia malè salvat jus veri hæredis, ex quo homagium ceperit non legitimū et ipsum inducit in seysinā ad exhęreditationem veri hęredis, cùm scit vel scire debet alium esse hæredem, vel impunē retinere posset seysinam, donec ei de veritate constaret, q quidem locum habere posset, si dubium esset an alius hęres esset vel non, cùm nullus compareat vel contendat.

2. Si dominus capitalis vacuam invenerit seysinam. Britton, *ib.* § 4. Glanville, ix. c. 6.

Si autem dñs capitalis vacuam invenerit possessionem post mortem tenentis sui, tenere se poterit in seysina absq, alicujus injuria, donec constiterit ei quis sit hæres legitimus. Et cùm constiterit ei quis sit hæres legitimus, donec ad ipsum venerit facturus ei sicut dño q de jure facere debebit, & maximè si ipsum ad dñm recognoscat, poterit enim contentio esse inter plures de jure dominii, de qua nihil ad præsens. Cùm autem dñs vacuam habuerit seysinam, ut prædictum est, hæres sine voluntate ipsius ingredi non poterit, q si fecerit super seysinam capitalis dñi, & dominus eum ejecerit: vel si ipse hæres dominum capitalem ejecerit, & ipse dominus statim eum rejecerit, ipse hæres per assisam non recuperabit, ut de libero tenemento suo, quia vacuam seysinam nō invenit, sed si dominus capitalis hęredem ejicere non possit, ejici debet ex officio

out to be heir, to wit, the second born with the first born, the legitimate with the bastard, restitution of the inheritance is not to be made to any of them, before it has been made clear which of them is the next or more lawful heir, which if he has done and he has given seysine to a non-legitimate heir and has taken his homage, if against the claim of the legitimate heir he is called to warrant, he is bound of right to warrant, although he may thus respond to the warranty, that he took his homage saving the right of every one, because he saves badly the right of the true heir, since he took the homage of a non-legitimate heir and admitted him into seysine to the disinheritance of the true heir, when he knows or ought to know that another was the heir, or he might with impunity have retained seysine, until it had been made clear to him concerning the truth, which indeed might have place, if it was doubtful whether there was another heir or not, since none appeared or disputed.

2. If the chief lord has found the seysine vacant.

But if the chief lord has found the possession vacant after the death of his tenant, he may keep himself in seysine without injury to any one, until it has been made clear to him who is the legitimate heir. And when it has been made clear to him who is the legitimate heir, until he shall have come to him intending to do to him as his lord what he ought of right to do, and chiefly if he has acknowledged him as his lord, for there may be a contention between several persons concerning the right of domain, concerning which nothing for the present. But when the lord has had the vacant seysine, as aforesaid, the heir cannot enter without his will, which if he shall have done against the seysine of the chief lord, and the lord shall have ejected him, or if the heir himself shall have ejected the chief lord, and the lord himself shall have forthwith re-ejected him, the heir shall not recover by an assise, as of his free tenement, because he has not found the seysine vacant, but if the chief lord cannot eject the heir, he ought to be ejected officially by a

superioris, cùm per assisam recuperare non possit. Cùm autem dominus capitalis sic se posuerit in seysinam vacuam, aut constat ei quis sit hęres, aut nescit hæredē, vel si duo vel plures contendant de hæreditate, & nescit quis eorum sit hæres propinquior, vel si f. 253. sciat quis sit propinquior, nescit tamen an sit superstes necne, plenæ ætatis vel nō, cùm hæres sit agēs in remotis partibus, si capitalis dominus nomine suo ingrediatur possessionem, statim acquiritur hæredi possessio, etiam hærede ignorante, quasi animo & corpore procuratorio. Eodem modo si hæres præsens sit, major vel minor. Si autem nullum sciat hęredem, vel si sciat, nescit utrum vivus sit vel mortuus, vel si dubitaverit quis ex pluribus qui se faciunt hæredes hæres sit propinquior, nulli istorum acquirit[1] liberum tenementum ex seysina sua, cùm nomine nullius certæ personæ ingressus sit possessionem, & in quibus casibus tenere se poterit in possessione, sine juris injuria, donec ei constiterit de hærede. Et unde si nullus hæres apparuerit, possit talis hæreditas esse eschaeta sua, & si ejiciatur, recuperabit seysinam suam ut de libero tenemento suo per assisam novæ disseysinæ, donec ei constiterit de hærede. Item esto quòd capitalis dominus in seysina invenerit fratrem postnatum vel bastardum, qui se facit legitimum hæredem, quæritur an talem ejicere possit sine judicio & impune? cùm sit alius hæres apparens, & videtur quòd non, quia hoc pertinet ad hæredem & non ad dominum capitalem, quia tales cùm ejecti fuerint, assisam portabunt contra dominum capitalem, & non competit domino contra tales exceptio liberi tenementi, vel bastardiæ, de hoc nihil ad

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[1] "acquiritur," MS. Rawl. C. 160.

superior, since he cannot recover by an assise. But when the chief lord has so put himself into a vacant seysine, he is either certain who is the heir, or he does not know the heir, or if two or more dispute the inheritance, and he does not know which of them is the next heir, or if he knows who is the next heir, he does not however know whether he is surviving or not, of full age or not, when the heir is actively employed in remote parts, if the chief lord enters into the possession in his own name, the possession is forthwith acquired for the heir, even whilst the heir is ignorant, as it were with the intention and person of a proxy. In the same way if the heir be present, major or minor. But if he knows of no heir, or if he knows of one, he does not know whether he is alive or dead, or if he has doubted who out of several, who make themselves out to be heirs, is the nearest heir, he does not acquire for any of them the free tenement by his seysine, since he has not entered into possession in the name of any certain person, and in which cases he can maintain himself in possession without injury to right, until he has ascertained respecting an heir. And hence if no heir shall appear, the said inheritance may be his escheat, and if he be ejected, he shall recover his seysine as of his free tenement by an assise of novel .disseysine, until he has ascertained respecting an heir. Likewise let it be that the chief lord has found in seysine a younger born brother or a bastard, who makes himself out to be the legitimate heir, it is asked whether he can eject such a person without a judgment and with impunity when there is another heir apparent, and it seems not so, because this appertains to the heir and not to the chief lord, because such persons when they have been ejected, will bring an assise against the chief lord, and the lord is not entitled to raise against such persons an exception of freehold or of bastardy, in this he is not at all concerned when there is an heir apparent, but if there be

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eum cùm sit hæres apparens, si autem nullus hæres appareret, hujusmodi exceptiones domino competerent pro defectu hæredis, & hæc dico, nisi tales diu in possessione extiterint per impotentiam vel negligentiam domini capitalis, quòd sine judicio ejici non possunt. Si autem verus hæres bastardum in possessione invenerit, vel hæredem propinquum, scilicet postnatum in absentia domini capitalis, statim & recenter eum ejiciat antequam longam & pacificam habeat seysinam & sic liberum tenementum ex tempore quod sufficit pro titulo, quod quidem facere non poterit post tempus, nec recuperabit per assisam novæ disseysinæ, quia jus merum quod descendit vero hæredi nō statim conjungitur cum seysina, nec competit vero hæredi contra tales assisa mortis antecessoris post lōgam & pacificam seysinam, ad seysinam antecessoris acquirendam, cùm omnes descendant ab uno stipite, ex persona ejus qui ultimò obiit seysitus de prædicta hæreditate, sed locum habebit breve de recto, sicut inferiùs apparebit in tractatu de consanguinitate. Sed si verus hæres tales statim & recenter ejicere non possit, si sibi statim ꝑquisiverit, bene jacebit assisa mortis antecessoris inter eos per diligentem impetrationem: quia sic interrumpitur eorum possessio, quia liberum tenementum habere non poterunt, & sic pares esse nō poterunt cum propinquiore hærede quoad jus possessionis, antequam liberū tenementum acquisierit ex tempore & longa possessione:[1] quod quidem esse poterit cùm longam & pacificam possessionem habuerit.[2] Item esto ꝗ absente capitali dn̄o frater bastardus fratrem bastardum invenerit in seysina, & si talē ejecerit, videndum erit an recuperare debeat ꝑ assisam non obstante exceptione de libero tenemento, quia si opponatur, locum non habebit: quia licet disseysitus bastardus sit, tamen non

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[1] "tenementum acquisitum ex "tempore et longâ possessione "habuerint," MS. Rawl. C. 160. "tenementum acquisiverint," MS. Crewe.

[2] "habuerint," MS. Crewe et Reg. 9. E. xv.

no heir apparent, the lord would be entitled to raise those exceptions from failure of heirs, and these things I say, unless the said persons have remained long in possession through the powerlessness or negligence of the chief lord, so that they cannot be ejected without a judgment. But if the true heir has found a bastard in possession, or a near heir, to wit, a younger born brother in the absence of the chief lord, let him forthwith and recently eject him before he has had a long and peaceable seysine and so the freehold from a time which suffices for a title, which he cannot do after a time, nor shall he recover by an assise of novel disseysine, for the mere right which descends to the true heir is not forthwith conjoined with the seysine, nor is the true heir entitled to an assise of mortdancester against such persons after a long and peaceable seysine, in order to acquire the seysine of an ancestor, when all descend from one stock, from the person of him who died last seysed of the aforesaid inheritance, but a writ of right will apply, as will be seen below in the treatise on consanguinity. But if the true heir cannot eject forthwith and recently such persons, if he has forthwith claimed it for himself, an assise of mortdancester will well lie between them through a diligent suing out [of a writ]; because their possession is thus interrupted, because they will not be able to have the freehold and so they cannot be on an equality with the next heir as regards the right of possession, before he has acquired the freehold by time and long possession, which indeed may be when he has had a long and peaceable possession. Likewise let it be that in the absence of the chief lord a bastard brother has found a bastard brother in seysine, and if he has ejected him, it is to be seen whether he ought to recover by an assise notwithstanding an exception concerning the freehold, because if it be objected it will not have a place; because although the person disseysed be a bastard, nevertheless such an

competit disseysitori talis exceptio, cùm sit bastardus, & maximè in odium spoliationis: sed cùm constiterit per assisam quòd uterq; sit bastardus, habita hinc inde cōpensatione bastardiæ, melior erit conditio primi possidentis, & maximè ejus qui causam & autoritatē habuerit à çapitali domino. Cùm autem contigerit quòd dominus capitalis primam habuerit seysinam & vacuam, & sit aliquis extra seysinam qui se facit hæredem, & capitalis dominus recognoscit eum ad hæredem, si hæres plenæ ætatis extiterit, statim capiat dominus capitalis homagium suum, & restituet ei hæreditatem, accepta securitate de relevio suo & fidelitate & sacramento de servitiis quæ ad dominum pertinent de prædicta hæreditate faciendis. Si autem infrà ætatem extiterit, statim & ante omnia homagium suum capiat, & tunc demum habeat custodiam & maritagium. Si autem talem ad hæredem non cognoverit, cujuscunq; ætatis fuerit hæres, tunc primò locum habebit assisa mortis antecessoris versus dominum capitalem, sicut versus quemlibet extraneum, & ita q si dum dominus capitalis primam seysinā habuerit, & de hærede constiterit & seysinam ei malitiosè facere distulerit, & vastum & destructionem fecerit, cum ipso tenemento damna restituat, sicut fieri debet in assisa novæ disseysinæ, licet non habeatur in usu, ad malitiam dominorum reprimendam, qui res hæreditarias per primam seysinam suam convertunt in prædicta,[1] sicut videri poterit in custode, qui custodiam habet hæreditatis cum hærede vel sine, si vastum fecerit vel destructionem, damna restituit & amittit custodiam.

f. 253 b.

Britton, iii. ch. vi. § 1.

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[1] "in prædictam," MS. Rawl. C. 160. "in propria," Reg. 9. E. xv.

exception (of bastardy) does not become the disseysor, since he is a bastard, and chiefly in hatred of the spoliation; but when it has been ascertained by an assise that each is a bastard, the compensation of bastardy weighing equally on either side, the condition of the first possessor will be the best, and chiefly of him who had a cause and authority from the chief lord. But when it has happened that the chief lord has had the first seysine and that a vacant seysine, and there is some person outside the seysine who makes himself out to be the heir, and the chief lord acknowledges him as the heir, if the heir be of full age, let the chief lord at once take his homage and restore to him the inheritance, having obtained security for his relief and his fealty, and an oath concerning the performance of the services which appertain to the lord from the aforesaid inheritance. But if he be under age, let him forthwith and before all things take his homage, and then at length let him have the custody and the maritage. But if he has not acknowledged the said person as the heir, at whatever age the heir may be, then in the first place an assise of mortdancester will have place against the chief lord, as against any stranger, and so that if whilst the chief lord has had the first seysine and the heir has been ascertained, and he has maliciously delayed to give seysine to him and has caused waste and destruction, he shall make good the losses with the tenement, as ought to be done in an assise of novel disseysine, although it is not in use, in order to repress the malice of lords, who convert hereditary things through their own first seysine into their own, in like manner as may be seen in the case of a guardian, who has the guardianship of the inheritance with or without the heir, if he has caused waste or destruction, he restores the losses and loses the guardianship.

f. 253 b.

Cap. II.

1. De impetratione brevis. Britton, iii. ch. ix. § 6.

Cum autem (ut prædictum est) ad hæredem non cognoscatur, statim recurrat ad superioris auxiliū, sive sit unus, sive plures participes unum jus habentes, quorum nullus sine alio assisam portare poterit, & si omnes in brevi non nominentur, pro uno tantum cadit breve, nec cùm non nominetur non erit sum̄onendus quòd sequatur cum participibus, sicut inferiùs observatur in quibusdam casibus. Facta igitur impetratione, de officio vic. satis constare poterit per ea quæ superiùs fiunt in aliis assisis. Forma autem brevis talis est.

2. Breve assisæ mortis antecessoris. Glanville, xiii. c. 3. 3 Edw. I. ch. xxxix.

Rex vic. salutem. Si talis fecerit te securum de clameo suo prosequendo &c. tunc sum̄ per bonos sum̄onitores xii. liberos & legales homines de visneto de tali villa, ꝗ sint coram justiciariis nostris ad primam assisam, cùm in partes illas venerint, parati sacramento recognoscere, si talis pater vel mater, vel avunculus, vel amita, frater, vel soror ipsius talis, fuit seysitus vel seysita in dominico suo ut de feodo, de tanto terræ, & tanto redditu cum pertinentiis in tali villa, de quo obiit,[1] et si obiit post ultimum reditū regis I. patris nostri de Hibernia in Angliā (& tēpore regis Edwardi mutatus fuit terminus iste post coronationem regis H. patris ipsius regis Edwardi), & si prædictus talis ejus hæres propinquior sit. Et interim terram illam vel teñtum unde redditus ille provenit videant, & nomina eorum imbreviari facias. Et summone per bonos summonitores talem, qui terram illam tenet vel

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[1] "de quo obiit seisitus post ultimum reditum regis Johannis patris nostri de Hibernia in Angliam, et si prædictus talis ejus hæres propinquior sit," MS. Rawl. C. 160. The same reading is also found in Sir Thomas Crewe's MS. in the British Museum, viz., Add. MSS. 11353. p. 111. dorso. See Introduction.

CHAPTER II.

1. Concerning the suing out a writ.

But when (as aforesaid) he be not acknowledged as heir, let him have recourse at once to the aid of a superior, whether there be one or several parceners having one right, none of whom can bring an assise without the others, and if they are not all named in the writ, the writ fails for one only, nor when he is not named will he not have to be summoned, that he should follow with the parceners, as is observed below in certain cases. The suing out of the writ having taken place it will be sufficiently clear concerning the office of the viscount from what has been said above in the other assises. But the form of the writ is of this nature:

2. A writ of an assise of mortdancester.

The king to the viscount greeting. If so-and-so has given you security for prosecuting his claim, &c., then summon by good summoners twelve free and loyal men of the neighbourhood of such a vill, that they be before our justiciaries at the first assise, when they have come into those parts, prepared to acknowledge on oath if the father or mother of so-and-so, or his uncle or aunt, or the brother or sister of the said so-and-so was seysed in domain as of a feud, of so much land and so great a rent with the appurtenances in such a vill when he died, and if he died after the last return of king John our father from Ireland into England [1] (and in the time of king Edward the term was thus altered: after the coronation of king Henry the father of the said king Edward), and if so-and-so aforesaid is his next heir. And meanwhile let them view that land or the tenement whence that revenue is derived, and cause their names to be inserted in the writ. And summon by good summoners such a person, who holds that land or that rent wherefrom he

f. 254.

[1] This limitation had been introduced by the Statute of Merton, 20 H. III. It was altered by the Statute of Westminster I. as stated, and so continued down to 32 Henry VIII. c. ii. § 2.

f. 254. redditum illum unde ei deforc.,[1] quòd tunc sit ibi auditurus illam recognitionem, & habeas ibi summonitores & hoc breve. Teste &c.

3. Aliud breve de eodem, qui est infra ætatem.

Rex vic. salutem. Summone per bonos summonitores xii. liberos & legales homines de visneto de villa tali quòd sint coram justiciariis nostris ad primam assisam cùm in partes illas venerint, parati sacramento recognoscere si talis pater, mater, avunculus, vel amita, frater, vel soror ipsius talis fuit seysitus in dominico suo ut de feodo de tanto terræ cum pertinentiis in tali villa, & si idem talis propinquior hæres ejus sit, & interim terram illam videant, & nomina eorum imbreviari facias. Et summone per bonos summonitores talem qui terram illam tenet, quòd tunc sit ibi auditurus illam recognitionem, & habeas ibi summonitores & hoc breve. Teste &c. Si autem antecessor ingressus fuerit religionem, & ita quòd mortuus sit seculo, vel profectus in peregrinatione, in quo itinere obiit, tunc variatur breve sic: parati sacramento recognoscere, si talis pater vel mater, avunculus vel amita, frater vel soror ipsius talis fuit seysitus vel seysita, in dominico suo ut de feodo de tanto terræ vel redditu cum pertinentiis in tali villa, die quo habitum religionis accepit, & si habitum suscepit illum post terminum ut supra. Et si idem talis &c. ut supra. Vel sic: die quo iter peregrinationis arripuerit versus Terram Sanctam, vel Sanctum Jacobum vel alibi, in quo itinere obiit ut dicitur, & si iter illud arripuit post ultimum &c., & si idem talis propinquior hæres ejus sit &c., omnia ut supra. Item est alius modus & alia forma ubi plures participes cohæredes unum jus habentes petant per assisam, sicut plures fœminæ, quarum quædam sunt maritatæ,. et quædam non, tunc dicetur hoc modo. Rex vicecom̃ salutem. Si A. et B. uxor ejus C. et D. sorores ipsius B. fecerint te secu-

[1] "deforceat," MS. Rawl. C. 160. Reg. 9. E. xv.

is disturbed, that he should be there to hear that acknowledgment, and produce there the summoners and this writ. Witness.

8. Another writ concerning the same, when he is under age.

The king to the viscount greeting. Summon by good summoners twelve free and loyal men of the visne of such a vill, that they be present before our justiciaries at the first assise when they shall have come into those parts, prepared to recognise on their oath, if the father of so-and-so or his mother or uncle or aunt or brother or sister was seysed in demesne as of a fee of so much land with its appurtenances in such a vill, and if the said so-and-so is his next heir, and meanwhile let them view that land and cause their names to be inserted in the writ. And summon by good summoners so-and-so who holds that land, that he be there to hear that recognition, and produce there the summoners and this writ. Witness, &c. But if the ancestor has entered into a religious order and so that he is dead to the world, or has gone on a pilgrimage, in which journey he has died, then let the writ be varied thus: prepared to acknowledge on oath, if the father or mother of so-and-so, or his uncle or aunt, or brother or sister was seysed in demesne as of a fee of so much land or rent with its appurtenances in such a vill, on the day on which he put on the robe of the religious order, and if he put on the robe after the term as above. And if the said so-and-so, &c., as above. Or thus, on the day on which he commenced the journey of his pilgrimage to the Holy Land, or to St. James' or elsewhere, in which journey he died as it is said, and if he commenced that journey after the last, &c., and if the said so-and-so is his next heir, &c., all as above. Likewise there is another manner and another form, where many parcener co-heirs having one right claim by an assise, as for instance several females, of whom some are married, and some not, then it shall be said in this manner: The king to the viscount greeting. If A. and B. his wife, C. and D. sisters of B. have

rum &c. tunc summone &c. quòd sint coram &c. parati sacramento recognoscere si talis pater ipsarum B. C. et D. fuit seysitus &c. (ut supra) de x. acris terræ cum pertinentiis in tali villa et si &c. et summoneatur tenens sive sit unus sive sit plures qui terram illam tenent, et ubi plures erunt assisæ propter pluralitatem tenentium. Item notandum, quòd ubi petens fuerit infrà ætatem, plegios non inveniet de prosequendo, et ideò non dicetur, Si talis qui est infrà ætatem fecerit te securum &c. Sed statim dicetur post (salutē). Sum̃ &c. si A. pater talis qui est infrà ætatem fuit seysitus &c. Item nec apponendus est terminus, quia si petens sit infrà ætatē, manifestè apparebit quòd talis antecessor minoris obiit post terminum. Itē est alia forma brevis quod quasi mixtam habet naturam, habet enim in parte naturam brevis mortis antecessoris, et in parte naturam brevis de consanguinitate, ubi hæreditas descendat ab uno stipite ad duas personas, scilicet quæ sunt quasi unus hæres per diversas lineas, sicut ad filiam, ubi tenet assisa mortis antecessoris, et ad nepotem ex alia filia, ubi locum habet consanguinitas de morte avi, et ad quem gradum assisa se nō extendit, et unde non dicatur in forma qua prius, sed variatur ita, scilicet: Si talis pater, vel mater, avus, vel avia B. vel proavus vel antecessor, fuit seysitus in dominico &c. Et quod dicitur de seysina avi vel aviæ ex parte nepotis, dici poterit de eorum fratribus et sororibus avunculis ipsius A. et amitis et consanguineis sive antecessoribus, cùm sint quasi in uno gradu cum avo & avia. Sed ulteriùs non tenet breve ascendendo, in eo quod tangit

f. 254 b.

given you security, &c., then summon, &c., that they should be present before, &c., prepared to acknowledge upon oath, if so-and-so the father of the said B., C., and D. has been seysed, &c. (as above), of ten acres of land with the appurtenances in such a vill, and if, &c., and let the tenant, whether it be one person or several who hold that land, be summoned, and when there shall be several assises on account of the plurality of tenants. Likewise it is to be noted, that when the claimant is under full age, he shall not find sureties for prosecuting, and therefore it shall not be said, if so-and-so who is under age has given you security, &c.; but it shall be said immediately after the word "greeting," summon, &c., if A. the father of so-and-so, who is under age, has been seysed, &c. Likewise no term is to be added, because if the claimant is under age, it will be manifestly evident that such an ancestor of the minor died after the term. Likewise there is another form, which has as it were a mixed nature, for it has in part the nature of a writ of mortdancester, and in part the nature of a writ of consanguinity, when the inheritance descends from one stock to two persons, to wit, who are as it were one heir by different lines, as to a daughter, where an assise of mortdancester applies, and to a granddaughter out of another daughter, where consanguinity concerning the death of the grandfather applies, and to which degree an assise does not extend, and wherefore it is not said in the form as before, but it is varied thus, to wit: if of such an one the father or mother, the grandfather or the grandmother B. or the great-grandfather or ancestor was seysed in demesne, &c. And what is said concerning the seysine of the grandfather or grandmother on the part of the grandchild, may be said of their brothers and sisters the uncles of the said A. and their aunts and cousins or ancestors, since they are as it were in the same degree with the grandfather and grandmother. But further a writ does not hold in the ascent in so far

f. 254 b.

assisam mortis antecessoris, quia assisa ulteriùs non extenditur. In eo autem quod tangit consanguinitatem ulteriùs extenditur descendendo quàm ad nepotem, quatenus tempus assisæ assisam mortis antecessoris permiserit usque ad trinepotem, qui omnes dicuntur consanguinei. Et de hac materia dicetur infrà pleniùs de tractatu de consanguinitate.

4. Breve, quod mixtam habet naturam cum morte antecessoris et cum consanguinitate.

In quo casu, cùm sit assisa mortis antecessoris conjungenda cum consanguinitate, non erit post recurrendum ad præcipe de cōsanguinitate sed ad assisām mortis, quia psona quæ propinquior est & facit assisam & trahit ad se personam & gradum remotiorem, ut ibi potiùs procedat assisa quàm præcipe, quia illud quod est majus remotum non trahit ad se quod est majus junctum. Sed e contrario in omni casu, & benè poterit quælibet istarum conjungi cum alia actione, quia quælibet loquitur de seysina ejus quam habuit die quo obiit, quod non est in brevi de recto, & quælibet de possessione & non de proprietate. Item si hoc, poterit tunc adjungi assisæ mortis antecessoris quilibet antecessor & successor qui assumi poterunt in placito de consanguinitate: ut si dicatur, talis frater vel soror, vel talis nepos vel ulteriùs consanguineus ut in linea infrà, vel talis frater vel soror & talis antecessor ut in linea supra, & eadem erit ratio.

5. Quod diversa sunt brevia de eodem.

Sunt etiam alia brevia huic aliquantulum similia de morte avunculi, & de morte amitæ, & materteræ & hæreditate partibili, & ubi in omni casu conjungit nepos cum avunculo vel amita, vel matertera, in assisa mortis antecessoris ubi non est mixta cum consanguinitate, & ubi dicitur: Si A. avunculus, amita, vel matertera B. & frater vel soror C. cujus hæredes ipsi sunt fuit seysitus vel seysita in dominico suo ut de

as it touches an assise of a death of an ancestor, because an assise is not extended further. But in so far as it touches cosinage it is extended further in descent than to the grandchild, inasmuch as the time of the assise permits an assise of the death of an ancestor as far as the grandchild's grandchild, who are all called cousins. And concerning this matter it will be discussed more fully in the treatise on cosinage.

4. A writ which has a mixed nature with mortdancester and with cosinage.

In which case, since an assise of mortdancester is to be conjoined with cosinage, recourse is not to be had afterwards to a præcipe respecting cosinage, but to an assise of mortdancester, because the person who is the nearest both makes the assise and draws to himself the person and the more remote degree, so that an assise rather than a præcipe proceeds, because that which is more remote does not draw to itself that which is more closely joined. But on the contrary in every case, and any of those may well be joined with another action, because each speaks of the seysine of him which he had on the day of his death, which is not in a writ of right, and each speaks of possession, not of property. Likewise if this be done, then there may be adjoined to the assise of mortdancester any ancestor or successor who may be assumed in a plea of cosinage, if it be said such a brother or sister, or such a grandson or further kinsman as in a line descending, or such a brother or sister and such an ancestor as in a line ascending, and the reason will be the same.

5. That there are divers writs on the same subject.

There are also other writs something like these concerning the death of an uncle, and concerning the death of a father's sister or a mother's sister and the shareable inheritance, and where in all cases the grandchild is conjoined with the uncle or the father's sister or the mother's sister in an assise of mortdancester, where it is not mixed up with cosinage, and where it is said if A. the uncle, or the father's sister, or mother's sister B. and the brother or sister C. whose heirs they are was seysed in demesne as of the fee, &c. But if the

feodo &c. Si autem hæreditas partibilis non sit, & avunculus de morte patris vel matris, avunculi, amitæ vel materteræ assisam mortis antecessoris portaverit, & nepos ex fratre breve de consanguinitate versus dominum capitalem & versus extraneas personas de hæreditate non partibili, nepos semper præferetur propter juris prærogativam, quod ei descendit. Et eodem modo dici poterit, si uterq, assisam mortis antecessoris arramaverit versus extraneam personam, nepos, s. de morte avunculi & materteræ, et avunculus ipsius de morte fratris vel sororis, cùm semper responderi possit ad assisam avunculi, quòd avunculus habet nepotem, qui majus jus habet in tenemento illo quàm habeat avunculus, si terra non sit partibilis, vel tantundem si terra sit partibilis, in quibus casibus nihil capiat per assisam. Si autem aliquis ipsorum petat versus alium per assisam, vel per breve de consanguinitate hæreditatem à communi stipite descendentem, avunculus versus nepotem vel e converso, nullius tenebit actio in hoc casu, sed locum habebit breve de recto: secundùm quod inferiùs dicetur in tractatu de consanguinitate.

Cap. III.

f. 255.
1. Qualiter procedendum est post impetrationem brevis, et de essoniis.

Impetrato igitur brevi mortis antecessoris aliquo modorum prædictorum, cùm fuerit vicecomiti exhibitum, & electis juratoribus & facto visu, detur dies partibus coram justiciariis certis die et loco, et sumōneantur juratores q tunc sint ibi ad faciendam illam recognitionem. Ad quem diem poterit se tenens essoniare si voluerit, unus vel plures separatim, secundùm q separatim tenuerint, & p se, vel simul, & in cōmuni,

inheritance be not shareable, and the uncle has brought an assise of mortdancester concerning the death of his father or mother, of his uncle or father's sister or mother's sister, and a grandson by a brother has brought a writ of cosinage against the chief lord and against extraneous persons concerning an inheritance not shareable, the grandson shall always be preferred on account of the prerogative of right, which descends to him. And in the same way it may be said if each has instituted an assise of mortdancester against an extraneous person, a nephew for instance concerning the death of an uncle and an aunt, and an uncle of the same concerning the death of a brother or sister, when it can always be answered to the assise of an uncle, that the uncle had a nephew who had a greater right in the tenement than the uncle, if the land be not shareable, or so much only, if the land be shareable, in which cases he would take nothing by an assise. But if any of them claims against another by an assise or a writ of cosinage an inheritance descending from a common stock, the uncle against the nephew or the converse, the action of no one will hold in this case, but a writ of right will have place, according to what will be said below in the treatise concerning cosinage.

CHAPTER III.

f. 255.

1. How proceedings are to be had after the suing out a writ. Concerning essoins.

A writ of mortdancester having been obtained in any of the aforesaid modes, when it has been exhibited to the viscount, and the jurors having been chosen and a view made, a day is given to the parties before the justiciaries on a certain day and at a certain place, and let the jurors be summoned that they be there to make that recognition. At which day the tenant may essoin himself, if he will, one or several separately, according as they have been separate tenants, and by themselves, or together, and in common, so that each of them may

ita q quilibet eorum habeat unicū essoñ de malo veniendi, si fuerint in ꝓvincia, & aliquando de servitio dñi regis, unū vel plura. Si autem ultra mare & ante sumonitionē, tūc de ultra mare habebunt unum diem brevem vel diffusum secundùm q tenens se essoniaverit de peregrinatione versus Terram Sanctam, de simplici peregrinatione, vel de passagio generali, vel ad Sanctum Jacobum, vel citra, ad minus tamen habebit spatium de ultra mare quadraginta dierum & unius ebbæ & unius fluctus, secundùm q inferiùs dicetur pleniùs de essoñ. Si autem primo die non venerit nec se essoniaverit, tunc statim resumoneatur. Et si assisa capi debeat in com̃, præcipiatur vicecom̃ q faciat ipsum resumoniri etiam sine brevi.

2. De resummonitione, s. quod fuit in comitatu vel extra.

Et revera ubicunq, capiatur extra com̃ post essoñ, vel resumoñ, vel diem datum, vel waranti vocationē: semper incipi debet in com̃, & ideò si fieri debet resumonitio fieri debet in com̃, sed si ad resummonitionem detur dies extra com̃, tunc necesse erit q fiat resummonitio per breve, ut sciri possit extra com̃ ꝑ breve, quid vicecom̃ fecit de resumonitione. Breve autem tale erit.

3. Breve de resummonitione, si assisa capienda fuerit extra comitatum.

Rex vic. salutē. Sumone per bonos sumonitores A. q sit corā justiciariis &c. tali loco tali die auditurus recognitionē assisæ mortis antecessoris, quæ summonita est in curia nostra coram præfatis justiciariis nostris de tanto terræ vel redditus cum pertinentiis in tali loco in tali villa, & ostensurus quare non fuit coram eisdem justiciariis nostris apud talem locum tali die, sicut alias sumonitus fuit, et habeas ibi sumonitores

have a single essoin of hindrance in coming, if they have been in the province, and sometimes an essoin on account of the king's service, one or more. But if he has essoined himself as beyond the sea and before the summons, then he shall have a day on account of absence beyond the sea, a short or a diffuse one according as the tenant has essoined himself on account of a pilgrimage to the Holy Land, or a simple pilgrimage, or a general passage, or to Saint James, or on this side, nevertheless he shall have at least a space of forty days beyond the sea and one ebb and one flow of the tide, according as shall be explained more fully below on the subject of essoins. But if he has not appeared on the first day nor has essoined himself, then let him be forthwith resummoned. And if an assise ought to be held in a county, let it be enjoined to the viscount that he cause him to be resummoned even without a writ.

2. Of a resummons, to wit, that he was in the county or beyond it.

And in truth whenever the assise is held beyond the county after an essoin or a resummons or a day given or a warrantor called, it ought always to be commenced in the county, and therefore if a resummons ought to take place, it ought to be made in the county, but if upon the resummons a day be given outside the county, then it will be necessary that a resummons be made by a writ, that it may be known outside the county by a writ, what the viscount has done concerning the resummons. And the writ shall be of this nature:

3. A writ of resummons, if the assise is to be held outside the county.

The king to the viscount greeting. Summon by good summoners A. that he should be before the justiciaries at such a place on such a day in order to hear the recognition of an assise of mortdancester which has been summoned in our court before our justiciaries concerning so much land or rent with its appurtenances in such a place in such a vill, and in order to shew wherefore he was not before our said justiciaries at such a place on such a day as he was otherwise summoned, and produce there the summoners and this writ. Wit-

et hoc breve. Teste &c. Sed refert quem diem habere debeat in resum̃onitione, utrum scilicet quindecim dierum vel minùs spatium, sed hæc terminari poterint secundùm q assisa capi debeat in com̃ vel extra com̃: si autem extra com̃, continebit dilatio spatium quindecim dierum, si autem infrà, non erit tam diffusa dilatio, sed erunt judiciæ[1] arbitrariæ dependentes ex justiciariorum voluntate. Post resum̃onitionem verò non jacebit essoñ, nec post essonium resum̃onitio: quia p essoñ videtur tenens concedere sum̃onitionem. Et ubi jacet resum̃onitio & ubi non, et in cujus persona, habetis supra de assisis ultimæ præsentationis pleniùs in principio. Post resum̃onitionem sive venerit tenens sive non venerit, capiatur assisa p defaltam, quia tantum operatur sua absentia quàm pręsentia: quia si pręsens esset, nihil dicere posset in odium defaltæ quare assisa remaneret, nisi fortè cùm venerit pferat chartas domini regis per quas dominus rex ei debeat warantisare, & sine quo dicat q non potest respondere: et idem erit dicendum, si chartas aliorum proferat & eos vocaverit ad warantū. Idē in aliis casibus, ubi scilicet ātecessor ille de cujus morte pfert assisā petens, non tenuit terram illam nisi ad vitam suam per cyrographum, & finē factū in curia domini regis, vel si felonia objiciatur vel alia similis exceptio peremptoria, quòd si nulla talis, statim pro pœna duarum illarum defaltarum capiatur assisa, secundùm quod fieri debet in assisa ultimæ præsentationis & aliis consimilibus, salva domino regi misericordia sua pro contemptu summonitionis.

Britton, l. iii. ch. 10. § 8.

f. 255 b.

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[1] "iuduciæ." MSS. Crowe et Reg. 9. E. XV. item MS. Rawl. C. 160.

ness, &c. But it is of importance what day he ought to have in the resummons, whether a space of fifteen days or less, but these things may be determined according as the assise ought to be held in the county or beyond it; but if beyond it, the delay will contain a space of fifteen days, but if within it, the delay will not be so diffuse, but the suspension of proceedings will be arbitrary depending on the pleasure of the justiciaries. But an essoin will not lie after a resummons, nor a resummons after an essoin, because by the essoin the tenant seems to admit the summons. And when a resummons lies and when not, and in whose person, you have above on the subject of assises of last presentation more fully in the beginning. But after the resummons whether the tenant has come or has not come, let the assise be held by default, because his absence works as much as his presence; because if he were present he could say nothing from the odiousness of his default why the assise should be stayed, except by chance when he has come, he should produce charters of the king, by which the king ought to be warrant for him, and without whom he says that he cannot answer, and the same will have to be said, if he produces the charters of others and calls them to warrant. The same will take place in other cases, where for instance the ancestor, concerning whose death the claimant brings an assise, did not hold the land except for his life by a chirograph, and a fine made in the court of the lord the king, or if felony should be objected or some other peremptory exception, but if nothing of that kind, let the assise be held forthwith as a penalty for those two defaults, according to what ought to be done in an assise of last presentation and other similar assises, saving an amercement to the lord the king for the contempt of the summons.

f. 255 b.

Cap. IV.

1. Qualiter petens debet fundare intentionem suam partibus comparentibus.

Utroq, autem tam petente quàm tenente comparente, perlecto brevi et audito, debet petens proponere intentionem suam secundùm formam brevis & fundare eam sic: Quòd pater vel mater vel alius antecessor suus fuit seysitus vel seysita in dominico suo ut de feodo de tanto terræ vel redditus cum pertinentiis in tali villa die quo obiit, & quòd obiit post terminum. Itē quòd ipse sit propinquior hæres & ostendat rationem quare sit, quæ quidem si tenens simpliciter negaverit, & p omnia vel quendam articulum prædictorum, per assisam poterit veritas declarari, vel si nihil habeat quod proponat, vel cùm habuerit & nihil proposuerit, statim procedet assisa per duodecim juratores, contra quos nihil excipi possit, et nō p pauciores, secundùm q fieri possit in assisa novæ disseysinæ per septem[1] ad minùs, ut supra per assisam novæ disseysinæ, & ideò hîc procedat assisa per duodecim ad minùs, qui nulla ratione sint recusabiles ut supra de nova disseysina. Jurare autem debent juratores in hac forma. Hoc audis, justiciarie, quòd veritatem dicam de hac assisa, & de terra vel redditu, vel de tenemento unde tantus redditus provenit, qui petitur, & unde visum feci per præceptum domini regis, & pro nihilo omittam quin veritatem dicam, sicut me Dominus &c. Et quilibet post alium sic: Tale sacramentum &c. ut supra. Et si quidam de novo appositi fuerint & recenter qui nunquam tenementum viderunt, jurare poterunt salvo visu. Et tunc refert utrum eodem die de novo appositi fuerint pro defectu aliorum recognitorum, vel ab initio electi & visum facere noluerint in contemptum: quo casu si recenter assumpti fuerint erit cum eis misericorditer agendum, ad plus & ad minùs secundum ordinationem justiciariorum. Si autem ab initio electi

Britton, l. iii. ch. x. § 18.

[1] "per septem" down to "disseysinæ," omitted, MS. Crewe.

CHAPTER IV.

1. How the claimant ought to found his declaration upon the parties appearing.

Each however, to wit, the claimant as well as the tenant appearing at the same time, upon the writ having been read aloud, the claimant ought to propound his declaration and to found it thus: that his father or mother, or some other ancestor of his, was seysed in his own demesne as of a fee, of so much land or rent with its appurtenances in such a vill on the day on which he died, and that he died after the term. Likewise that he is the next heir, and let him state the reason why he is so, which, indeed, if the tenant simply deny either wholly or as regards some article of those aforesaid, the truth may be declared by an assise, or if he has nothing to state, or if he has and states nothing, the assise shall forthwith proceed by twelve jurors, against whom no exception can be taken, and not by fewer, according as may be done in an assise of novel disseysine by seven at least, as above by an assise of novel disseysine, and accordingly let the assise here proceed by twelve at least, who are refusable on no grounds as above in novel disseysine. But the jurors ought to swear in this form: You hear this, justiciary, that I will say the truth concerning this assise, and concerning the land or rent, or concerning the tenement from which so much rent is derived, which is claimed, and whereof I have had a view by the precept of the lord the king, and for nothing will I omit to declare the truth, so may the Lord me, &c. And each of the others, Such an oath as, &c., as above. And if some have been added anew and recently, who have not viewed the tenement, they may swear "saving the view." And then it is of importance whether they have been added anew on the same day from the default of other jurors, or if they have been chosen from the commencement and have been unwilling to take a view in contempt, in which case if they have been recently assumed, they will have to be amerced more or less according to the ordinance of the justiciaries. But if they have been elected and assumed from the commence-

fuerint & assumpti & visum facere ad mandatum vicecomitis recusaverunt, dupliciter deliquerunt, scilicet de falso sacramento, & contemptu, & magis ut videtur quàm illi qui obediunt, licet pejeraverint. Et unde nescitur, si ejusdem debet esse conditionis cujus sunt illi qui visum fecerint, cùm de jure conditionis deterioris esse deberent. Facto igitur sacramento (secundùm quod prædictum est) cùm omnes præsentes fuerint, si per omnia convenerit secundùm eorum veredictum, aut judicabitur seysina petenti aut tenenti imperpetuum, vel ad tempus à clamore petentis liberabitur per assisam, & sic absolutio vel condemnatio subsequetur, secundùm quòd juratores verum dixerint vel falsum, certum vel obscurum, ut supra de assisa. Et si falsum dixerint, inde sequetur remedium, ut infrà de convictionibus.

2. f. 256. Si juratores sint absentes, breve de habendo corpora eorum.

Item licet partes[1] præsentes sint & se posuerint in assisam, juratores tamen possunt esse absentes qui declarare deberent veritatem, & ideò de necessitate aliquando ponitur assisa in respectu pro defectu recognitorum, & ideò præcipiatur vicecom̃ quòd habeat coram justiciariis corpora recognitorum per hoc breve. Rex vicecom̃ salutem. Præcipimus tibi q habeas coram justiciariis nostris apud talem locum tali die corpora A. B. C. & aliorum nominandorum, recognitorum assisæ mortis antecessoris, quam talis in curia nostra coram &c. arramaverit versus talem de tanto terræ cum pertinentiis in tali villa ad faciendam assisam illam, et si plures fortè fecerint defaltam, tunc dicatur, & ad audiendum judicium suum de pluribus defaltis.

3. Si capta fuerit assisa per

Si autem per defaltam capiat assisa, sive tenens præsens fuerit in ipsa captione sive non, vel si præsens

[1] "partes," omitted, MS. Rawl. C. 160.

ment and have refused to take a view upon the mandate of the viscount, they are doubly delinquent, to wit, in breaking their oath and in contempt, and more so as it seems than those who obey, although they have perjured themselves. And hence it is not known, if they ought to be in the same condition as those who have taken a view, since of right they ought to be in a worse condition. The oath having then been taken (according to what has been said above) when all are present, if it has been agreed wholly according to their verdict the seysine shall be adjudged in perpetuity either to the claimant or to the tenant, or the tenant shall be released for a time from the claim of the plaintiff by the assise, and so an acquittal or a condemnation shall follow according as the jurors have said what is true or false, certain or uncertain, as above concerning an assise. And if they have said what is false, a remedy shall thereupon follow, as below concerning convictions.

2. f. 256. If the jurors should absent themselves, a writ to seize their persons.

Likewise although the parties may be present, and put themselves on the assise, the jurors nevertheless, who ought to declare the truth, may be absent, and therefore of necessity the assise is respited from default of recognisors, and therefore let it be enjoined to the viscount that he produce before the justiciaries the persons of the recognisors by this writ. The king to the viscount greeting. We enjoin you that you produce before our justiciaries at such a place on such a day the persons of A. B. C. and others to be named, the recognisors of an assise of mortdancester, which so-and-so in our court before &c. has instituted against such a person concerning so much land with its appurtenances in such a vill, to hold that assise, and if several by chance have made default, then let it be said, "and to hear judgment "against himself for several defaults."

3. If the assise has been held

But if the assise be held by default, whether the tenant has been present at the holding of it or not, or if being

defaltam, vel si statim tenens se ponat in assisam sine alia exceptione. Britton, l. iii. ch. x. § 14.

concesserit assisam, & ita capiatur in modum assisæ, & non juratæ, si juratores in veredicto suo dicendo super sacramentuum suum de aliqua exceptione in quam petens se non posuerit falsum dixerint, locus erit cōvictioni, quia neq, tenens sit super exceptione status, finis facti, convētionis, rei judicatæ, vel hujusmodi: vel si dixerint de aliqua exceptione verum vel falsum alia quàm in quam petens & tenens se posuerint, si falsum dixerint, locus erit convictioni: quod tamen non esset, si præsens utraq, pars de communi consensu, quòd ita esset vel non esset, se poneret in assisam.

Cap. V.

1. De seysina facta petenti per judicium.

Contingit multotiens quòd ante judicium partes terminant assisam per concordiam. Sed ante videndum est qualiter seysina fiat petenti postquam per judicium recuperaverit. Et sciendum quòd petenti fieri debet seysina per tale breve per judicium.

2. Breve de seysina facienda post captionem assisæ.

Rex vicecomiti salutem. Scias quòd A. in curia nostra recuperavit seysinam suam versus B. de tanto terræ cum pertinentiis in tali villa per assisam mortis antecessoris inde ibi inter eos captam. Et ideò tibi præcipimus, quòd prædicto A. de prædicta terra cum pertinentiis sine dilatione plenariam seysinam habere facias. Item alia forma, ubi custos abjudicatus est de custodia sua fortè propter vastum & destructionem quam fecit in custodia sua, ideò fiat parenti illius minoris nomine minoris et ad opus minoris seysina

present he has admitted the assise, and so it be held after the manner of an assise and not of a jury, if the jurors in giving their verdict upon their oaths without any exception upon which the tenant has not put himself has said what is false, there will be place for a conviction, because the tenant has not put himself upon an exception of *status*, or of a fine having been levied, or of a convention, or of a previous judgment in the matter: or if they have said what is true or false upon any exception other than that upon which the claimant or the tenant has put himself, if they have said what is false there will be place for a conviction, which, however, would not be the case, if each party being present with common consent that it was so or was not so, has put himself upon the assise.

by default or if the tenant has at once put himself on the assise without any exception.

Chapter V.

1. Of seysine made to the claimant by a judgment.

It happens on many occasions that the parties before judgment terminate the assise by an accord. But we must first see how seysine is to be made to the claimant after he has recovered by the judgment. And it is to be known that seysine ought to be made to the claimant by the judgment through such a writ.

2. A writ for making seysine after the holding of the assise.

The king to the viscount greeting. Know that A. in our court has recovered his seysine against B. concerning so much land with its appurtenances in such a vill by an assise of mortdancester there held between them. And therefore we enjoin you that you cause the aforesaid A. to have plenary seysine without delay of the aforesaid land with its appurtenances. Likewise another form, where a guardian has been judicially removed from his guardianship by reason of waste and destruction which he has caused in his wardship, therefore let there be made to the parent of the minor in the name of the minor and in aid of the minor seysine by this writ, or

per hoc breve, vel hoc potest esse quia tenementum fuit socagium & pertinuit custodia ad matrem. Rex vicecomiti salutem. Scias quòd A. filia N. in curia nostra coram justiciariis nostris per judicium ejusdem curiæ nostræ recuperavit seysinam suam versus B. de tanta terra cum pertinentiis in tali villa, unde prædictus N. pater ipsius A. obiit seysitus ut de feodo. Et ideò tibi præcipimus quòd C. s. tali mulieri custodi ipsius A. tanquam propinquiori parenti ex parte matris, et eo quòd ipse A. est infrà ætatem, de prædicta terra sine dilatione plenariam seysinam habere facias. Et non permittas quòd A. capitalis dominus feodi illius habeat custodiam illius terræ vel hæredis, quia in prædicta curia nostra foris judicatur de custodia illa, eo quòd terra illa teneri debet de socagio. Et sub eadem forma fieri poterit breve de seysina, ubi capitalis dominus vastum fecerit et destructionē, propter quod sit foris judicatus, quod quidem fieri poterit per assisam mortis antecessoris: & tunc dicatur in fine brevis, foris judicatus est de eadē custodia propter vastum & destructionem quam fecit in eadem terra. Teste &c. Et notandum quòd in nulla assisa præterquam in magna assisa per breve de recto recuperat aliquis seysinam per defaltam, quia in aliis assisis omnib9 nulla alia sequitur pœna post defaltam, post resummonitionem & essoñ, nisi quòd capiatur assisa per defaltam. Si sit aliquis qui queratur post assisam captam, quòd seysinam suam habere non possit secundùm quod illam recuperaverit, tunc fiat vicecom̃ breve in hac forma.

f. 256 b.

3. Breve si querens queratur, quod seysinam suam habere non possit.

Rex vicecomiti salutem. Scias quòd justiciarii nostri qui ultimò itineraverunt in comitatu tuo recordantur quòd A. recuperaverit seysinam suam versus B. de tanta terra &c. coram eisdem justiciariis nostris apud N. per assisam mortis antecessoris inde ibi inter eos captam, & unde idem A. queritur quòd idem B. adhuc ei deforceat terram illam, vel sic: quòd seysinam

this may be done because the tenement is socage and the guardianship appertains to the mother. The king to the viscount greeting. Know that A. the daughter of N. in our court before our justiciaries has recovered by a judgment of our said court her seysine against B. concerning so much land with its appurtenances in such a vill, whereof the aforesaid N. the father of the said A. died seysed as in fee. And therefore we enjoin you that you cause to be given to C., to wit, such a woman, as guardian of the said A., as the nearest parent on the mother's side, and inasmuch as the said A. is under age, plenary seysine of the aforesaid land without delay, and that you do not permit that A. the chief lord should have the custody of the said land or of the said heir, because in our aforesaid court he has been deprived by a judgment of the said custody, inasmuch as that land ought to be held in socage. And a writ may be issued under the same form concerning the seysine, when the chief lord has caused waste and destruction, on account whereof he has been deprived by a judgment, which may be done by an assise of mortdancester, and then let it be said at the end of the writ, he has been deprived by a judgment of the said custody on account of waste and destruction, which he had caused on that land. Witness &c. And it is to be noted that in no assise except in a great assise by a writ of right does any one recover seysine by default. If there be any one who complains after an assise has been held, that he cannot have his seysine according as he has recovered it, then let a writ go to the viscount in this form:

f. 256 b.

3. A writ if the plaintiff complains, that he cannot have seysine.

The king to the viscount greeting. Know that our justiciaries, who went the last iter in your county, record that A. has recovered his seysine against B. concerning so much land &c. before our said justiciaries at N. through an assise of mortdancester there held thereon between them, and whereof the said A. complains that the said B. still deforces that land from him, or thus, that he cannot

suam inde habere non potest, sicut eam recuperaverit, vel non in pace: Et ideò tibi præcipimus quòd eidem A. sine dilatione plenariam seysinam habere facias de prædicta terra secundùm quod illam recuperavit, & ipsum in seysina sua manuteneas & defendas, ne amplius inde clamorem audiamus. Teste &c. Item alia forma, si tenens sine captione assisæ recognoverit terram esse ipsius petentis.

4. **Breve de seysina, ubi tenens gratis recognovit.**

Rex vicecomiti salutem. Scias, quòd cùm assisa mortis antecessoris summonita esset in curia nostra coram &c. inter A. petentem & B. tenentem de tanto terræ cum pertinentiis in tali villa vel aliter. Scias, quòd cùm A. in curia nostra coram &c. peteret versus B. tantam terram &c. per assisam mortis antecessoris ibi inter eos summonitam, idem B. venit in eadem curia nostra coram &c. & recognovit totam prædictam terram cum pertinentiis esse jus ipsius A. & illam ei reddidit in eadem curia: & ideò tibi præcipimus &c. ut supra, et si per tale breve seysinam suam habere non possit, vel uti seysina pacifica, solent justiciarii super hoc scribere vicecom̃ sub nomine suo ex parte domini regis ita.

5. **Si justitiarii propria autoritate scribant vicecomiti ex parte domini regis.**

Talis et socii sui justiciarii itinerantes in tali comitatu vic. salutem. Scias, quòd talis in curia domini regis coram nobis recuperavit seysinam suam &c. ut supra. Et ita in aliis brevibus omnibus secundùm formam brevis: & ideò vobis mandamus ex parte domini regis &c. ut supra. Si quis per concordiam & finem factum seysinam suam recuperaverit vel in assisa mortis antecessoris, vel recognoverit terram illam in toto vel in parte esse jus petentis, vel petens e contrario remiserit & quietum clamaverit jus suum, vel alio quocunq; modo concordati fuerint, tota forma

have his seysine thereof as he has recovered it, or not in peace, and therefore we enjoin you cause the said A. without delay to have plenary seysine of the aforesaid land according as he has recovered it, and that you maintain and defend him, that we may no more hear a complaint from him. Witness, &c. Likewise another form if the tenant without the holding of an assise has acknowledged the land to be the plaintiff's:

4. A writ for seysine, where a tenant gratuitously acknowledges the claim.

The king to the viscount greeting. Know that when an assise of mortdancester was summoned in our court before &c., between A. as claimant and B. as tenant of so much land with its appurtenances in such a vill, or otherwise. Know that when A. in our court before &c., claimed against B. so much land &c. by an assise of mortdancester summoned there between them, the said B. came into our court before &c. and acknowledged that the whole of the aforesaid land with its appurtenances was the right of the said A., and he restored it to him in the said court; and therefore we enjoin you &c. as above, and if he cannot have his seysine through such a writ, or enjoy a peaceable seysine of it, the justiciaries are accustomed to write to the viscount under their own name on behalf of the lord the king thus:

5. If the justiciaries of their own authority write to the viscount on behalf of the lord the king.

So-and-so and their associate justiciaries itinerant in such a county to the viscount greeting. Know that such a person in the court of the lord the king before us has recovered his seysine &c. as above. And so in all other writs according to the form of the writ, and therefore we command you on behalf of the lord the king &c. as above. If any one has recovered his seysine by an accord and a fine levied or in an assise of mortdancester, or has acknowledged the land in whole or in part to be the right of the claimant, or the claimant on the contrary has remitted and quit-claimed his right, or in some other manner they have come to an accord, let the entire form of the accord, according to what has been agreed upon

concordiæ secundùm quod inter partes convenerit inseratur in brevi de seysina facienda tali modo.

6. f. 257. Breve de seysina per concordiam.

Rex vicecomiti salutem. Scias, quòd convenit in curia nostra coram justiciariis &c. inter A. petentem & B. tenentem de tanto terræ cum pertinentiis in tali villa, unde assisa mortis antecessoris sum̃onita fuit inter eos in eadem curia, scilicet quòd prædictus talis remisit vel recognovit &c. Et sic inseratur tota forma concordiæ de verbo in verbum, & in fine dicatur: Et ideò tibi præcipimus quòd prædicto tali de tota prædicta terra cum pertinentiis secundùm quod prædictum est sine dilatione plenariam seysinā habere facias. Teste &c. Si autem petens totum remiserit vel tenens totum recognoverit et receperit aliquam terram in compensationem pro remissione vel recognitione, tunc dicatur.

7. De extensione facienda, si forte alia terra assignanda fuerit in excambium.

Sciatis quòd convenit &c. ut supra, scilicet quòd prædictus talis recognovit vel remisit &c. & pro hac &c. idem B. concessit eidem A. viginti solidatas terræ & redditus de terra sua in tali villa. Et ideò tibi præcipimus, quòd assumptis tecum duodecim tam militibus quàm aliis liberis, legalibus & discretis hominibus de vicineto illo per quos negotium illud melius expediri poterit, in propria persona tua accedas ad manerium illud, & per eorum sacramentum extendi & appretiari facias viginti solidatas terræ & redditus in prædicto manerio loco competenti, & facta extensione & appretiatione, tunc per visum recognitorum prædictorum habere facias & assignare eidem tali prædictas viginti solidat̃ terræ & redditus cum pertinentiis per rationabilem extensionem. Et quid & ibi, & per quas particulas terram illam & redditum ei assignaveris no-

between the parties, be inserted in the writ for giving seysine in this manner:

6.
f. 257.
A writ for seysine through an accord.

The king to the viscount greeting. Know that it has been agreed upon in our court before our justiciaries &c., between A. the claimant and B. the tenant, concerning so much land with its appurtenances in such a vill whereof an assise of mortdancester has been summoned between them in the said court, to wit, that such a person aforesaid has remitted or acknowledged &c. And so let the whole form of the accord be inserted word for word, and at the end let it be said, and therefore we enjoin you that you cause so-and-so to have plenary seysine without delay of the whole of the aforesaid land with its appurtenances as aforesaid. Witness &c. But if the claimant has remitted the whole or the tenant has acknowledged the whole and has accepted some land in compensation for the remission or the acknowledgment, then let it be said.

7.
About making an extent, if by chance other land has to be assigned in exchange.

Know ye that it has been agreed upon &c. as above, to wit, that so-and-so aforesaid has acknowledged or remitted &c. and for this &c. the said B. has allowed to the said A. twenty shilling's worth of land and the rents of his land in such a vill, and therefore we enjoin you, that having assumed to yourself twelve as well knights as other free, loyal, and discreet men of that visne through whom that business may be better expedited, you go in your proper person to that manor and by their oaths cause to be extended and to be appraised twenty shilling's worth of land and the rents in the aforesaid manor in a competent place, and upon an extension and appraisement having been made, then by the view of the aforesaid recognisors cause the said person to have and to have assigned to him the aforesaid twenty shilling's worth of land and the rents with the appurtenances by a reasonable extension. And what and there and by what parcels you will have assigned that land and rent to him

bis vel justic. nostris &c. tali loco & tali die, evidenter & distinctè et appertè per literas tuas sigillatas sigillo tuo et sigillis prædictorum duodecim juratorum & per duos legales homines ex illis per quorum visum illam terram & redditum ei assignaveris, et habeas ibi hoc breve.

CAP. VI.

1. De exceptionibus et responsionibus contra assisam, quare debeat remanere.

Item partibus in judicio constitutis multa poterit tenens dicere contra psonam justiciarii de jurisdictione. Item contra breve impetratum de errore. Item contra psonam petentis, quare non possit petere. Item de minus legitima sumonitione. Item contra personas juratorum, et hæc sunt quasi extra assisam & non tangunt actionem neq; perimunt, sed ad tempus impediunt, secundùm quod in magna parte dictum est supra in tractatu de assisa novæ disseysinæ, sed quia superiùs minùs dictum est de sumonitione, quia nulla est ibi sumonitio sed attachiamentum, hîc in parte dicendum est. Cùm igitur tenens sumoneatur ad certum diem q sit ibi auditurus illam recognitionem, tunc aut est sumonitio illa legitima et rationabilis vel minus legitima, sive testata fuerit sive non testata: si autē legitima, tūc procedatur in assisa, si autē illegitima aut est calūniata aut nō calūniata. Si autē calūniata sit, inquirat̃ à sumonitoribus (facta examinatione separata) de die & loco & aliis circumstantiis, & si facta examinatione constiter̃ sumonitionem esse legitimam, tunc procedat̃ (ut priùs) ad assisam. Si autem

[certify] to us or our justiciaries &c., at such a place and on such a day, evidently and distinctly and openly by your letters sealed with your seal and with the seals of the aforesaid twelve jurors and by two loyal men out of their number, by whose view you have assigned to him that land and rent, and produce there this writ.

Chapter VI.

1. Of exceptions and replies against the assise, wherefore it ought to be stayed.

Likewise when the parties are placed in court the tenant may say many things against the person of the justiciary concerning his jurisdiction. Likewise against the writ sued out erroneously. Likewise against the person of the claimant, wherefore he cannot claim. Likewise concerning the summons being not legitimate. Likewise concerning the persons of the jurors, and these are rather as it were outside the assise and do not touch nor perempt the action, but for a time impede it, according to what has been said in a great part above in the treatise concerning an assise of novel disseysine, but because little has been said above concerning a summons, because there is no summons there but an attachment, we must here speak of it in part. When therefore the truant is summoned for a certain day that he be there to hear the recognisance, then that summons is either legitimate and reasonable or not legitimate, whether it was attested or not attested; but if it be legitimate, then let the proceedings of the assise be continued; but if it is not legitimate, it is either impugned or not impugned. But if it be impugned, let it be inquired into from the summoners (the examination being conducted separately) concerning the day and the place and the other circumstances, and if upon an examination having been made it shall be established that the summons is legitimate, then let proceedings be continued with the assise. But if it

f. 257 b.
Britton, l. iii. ch. x. § 8.

constiterit illam esse illegitimā, tunc detur alius dies legitimus secundùm q partes fuerint manentes infrà comitat̄ vel extra. Ad quem diem poterit tenēs se essoniare si voluerit, si defaltam fecerit non erit resummonendus, sed capiatur assisa per defaltam, quia diem datum in banco dedicere non poterit nec etiam causari post essonium factum, quia per essonium concedit summonitionem esse rationabilem. Item nec post resummonitionem, quia si sum̄onitio fuerit minus rationabilis, resum̄onitio & dies datus à judice dici non poterit minùs rationabilis. Item si summonitio minùs fuerit rationabilis, sed tamen à tenente cùm venerit non calumniata, procedendum erit ac si esset rationabilis nec si justiciarius illam noverit esse minùs legitimam, non pertinebit ad ipsum propter hoc dare tenenti exceptionem. Item cùm ambo præsentes fuerint in judicio & petatur audientia brevis & fortè fuerit deperditum per negligentiam clericorum vel vicecom̄, non tamen propter hoc remanebit assisa, dum tamen coram justiciariis fuerit semel recitatum & auditum vel in comitat̄, & ita q juratores electi fuerint & visus terræ factus, si hoc fuerit coram justiciariis protestatum.

2.
Britton, *ib.* § 18.

Item cùm justiciarius assignatus fuerit ad aliquam assisam capiendam specialiter, si breve originale fuerit deperditum, tamen non nocet, si justiciarius exhibeat warantum, cùm in waranto contineatur originale, sed non tenet econtrario, videlicet si warantus deficiat quòd assisa procedat, nisi fortè talis sit justiciarius quasi capitalis à latere domini regis transmissus.

be ascertained that the summons is illegitimate, then let another legitimate day be appointed according as the parties are residing within the county or are beyond it. At which day the tenant may essoin himself, if he will, if he should make default he is not to be resummoned, but let the assise be taken by default, because he cannot deny that a day was given him by the bench, nor allege an excuse after he has made an essoin, because by an essoin he admits that the summons was reasonable. Likewise he cannot after a resummons, for if the summons was not reasonable, the resummons and a day given by the judge cannot be said to be unreasonable. Likewise if the summons was not reasonable, but nevertheless was not impugned by the truant when he has appeared, proceedings will be continued as if it was reasonable, nor if the justiciary be aware that it is not legitimate will it pertain to him for that reason to allow to the tenant an exception. Likewise when both are present in judgment, and a short audience be prayed and the [writ] has been lost through the negligence of the clerks or of the viscount, the assise shall not for that reason be stayed, provided it has been once read aloud before the justiciaries or in the county, and so that the jurors have been chosen and a view of the land made, if this has been protested before the justiciaries.

f. 257 b.

2. If the original writ has not been exhibited because it has been lost, what is to be done.

Likewise when a justiciary has been assigned to hold specially some assise, if the original writ be lost, nevertheless it is not hurtful if the justiciary exhibits his warrant, since the original writ is comprised in the warrant, but the contrary does not hold good, to wit, if the warrant fails, that the assise should proceed, unless by chance the justiciary be as it were a chief justiciary sent from the side of the king himself.

Cap. VII.

1. Si tenens warrantum vocaverit in assisa mortis antecessoris.

Britton, l. iii. ch. xi. § 1.

Item si ambo præsentes fuerint in judicio petens & tenens, habet fortè tenens warantum & defensorem, qui eum defendere tenetur in seysina sua contra petentem. Quo casu refert, cùm talem tenens vocaverit ad warantū, utrum warantus plenæ ætatis fuerit vel infrà ætatem, quia si infrà ætatem, oportet tenentem docere rationem quare debeat warantizare, & chartas vel homagium captum ab antecessore, vel aliud, ne frivola sit vocatio vel dolosa, ꝗ quidem est in majore, licet sine charta vocari possit ad warantum per auxilium curiæ, si petatur auxilium, si autem non, qui vocavit faciat eum venire. Illud idem fiat de minore, si constiterit quòd debeat warantizare, licet cùm venerit ad chartas antecessoris sui non teneatur ante ætatem respondere.

2. Si warrantus infra ætatem fuerit, quid sit agendum.

f. 258.

Breve enim ad sum̄onendum warantum, si fuerit manens extra comitaẗ, tale erit, si autem infrà, sine brevi sum̄oneatur. Potest item unus tenens plures vocare warantos, qui sunt loco unius hæredis, sicut unum corpus, & eodem modo plures successivè de waranto in warantum, & quo casu, si unus ex pluribus defaltam fecerit, capiatur assisa per defaltam unius ac si omnes defecissent, sive quidam illorum fuerint infrà ætatem sive non. Item plures tenentes unum possunt vocare ad warantum vel plures. Item plures tenentes plures warantos. Breve autem de summonendo warantum tale erit.

3. Breve de summo-

Rex vicecomiti salutem. Summoneas per bonos summonitores A. ꝗ sit coram justiciariis &c. itinerantibus

Chapter VII.

1. If the tenant has called a warrantor in an assise of mortdancester.

Likewise if both should be present in court, the claimant and the tenant, the tenant has by chance a warrantor and a defender who is bound to defend him in his seysine against a claimant. In which case, it is of importance when the tenant has called such a person to warrant, whether the warrantor is of full age or under age, because if he be under age it is incumbent on the tenant to show cause, wherefore he ought to warrant, and to exhibit charters and to prove homage taken by his ancestor, or something else, to show that the calling him to warrant is not frivolous nor deceitful, which is also the case if he be of age, although he may be called to warrant without charters [being shown] by the aid of the court, if it be asked for, but if not, let him who called him cause him to appear. Let the same thing be done in the case of a minor, if it be made clear that he ought to warrant, although when he has come to the charters of his ancestor, he is not bound to answer until he has come of full age.

2. If the warrantor be under age, what is to be done.

But a writ to summon the warrantor, if he be staying outside the county, should be of this form, but if within the county, he may be summoned without a writ. Likewise one tenant may summon several warrantors who are in the place of a single heir, like one body, and in the same way several successively from warrantor to warrantor, and in which case if one out of several has made default, let the assise be taken by the default of one as if they had all made default, whether some of them have been under age or not. Likewise several tenants may call one or more to warrant. Likewise several tenants may call several warrantors. But a writ to summon a warrantor shall be of this form: f. 258.

3. A writ for summon-

The king to the viscount greeting. Summon by good summoners A. that he be present before our justiciaries

nendo warrantum.

& ad hoc specialiter constitutis, vel justiciariis de banco tali loco, tali die ad warantizandum B. tantam terram cum pertinentiis in tali villa, quam C. in curia nostra coram eisdem justiciariis nostris clamaverit, versus eundem B. per assisam mortis antecessoris inde ibi inter eos summonitam. Et unde idem B. in eadem curia nostra coram eisdem justiciariis nostris vocavit ipsum A. ad warantum versus prædictum C. & habeas ibi summonitores & hoc breve, teste &c. Si autem plures waranti fuerint vocati manentes in eodem comitat̃, tunc omnes summoneantur simul & per unum breve. Si autem in diversis com̃, tunc quilibet warantus habeat suum breve, ita tamen quòd sic sint interlaqueata, quòd in quolibet brevi fiat mentio de omnibus warantis tali modo.

4. Breve de summonendo warrantum, cum vocatus manens sit extra comitatum, interlaqueatum.

Summoneas per bonos summonitores A. quòd sit coram &c. ut supra, ad warantizandum B. simul cum C. & D. tantam terram &c. ut supra, ita quòd quodlibet breve respondeat alteri, & quòd in quolibet brevi fiat mentio de quolibet waranto.

5. De essoniis post vocationem warranti.

Et ad diem suum poterunt se essoniare simul & semel vel vicissim, ita quòd quilibet eorum unicum habeat essonium, antequam ad warantiam respondeant, nisi prima die compareant & velint gratis respondere. Si autem ad diem summonitionis comparuerint waranti & petens, & tenens non, statim procedet assisa, & capiatur per defaltam, si juratores præsentes fuerint; & si non, detur alius dies, & waranti, cùm se obtulerint usque ad quartum diem, quarto die recedent quieti de warantia, nec poterit tenens ulteriùs aliquid dicere, quare assisa remaneat. Sed quare non recuperat pe-

Britton, *ib.* §§ 5, 6.

&c. itinerant and for this purpose specially appointed, or the justiciaries of the bench at such a place on such a day to warrant to B. so much land with its appurtenances in such a vill, which C. has claimed in our court before our said justiciaries against the said B. by an assise of mortdancester summoned thereon at that place between them. And whereof the said B. in our said court before our said justiciaries has vouched the said A. as a warrantor against the aforesaid C., and produce there the summoners and this writ. Witness &c. But if several warrantors have been vouched abiding in the same county, then let them all be summoned together and by one writ. But if in different counties, then let each warrantor have his own writ, in such manner however that they may be thus interlaced, that in each writ mention be made of all the warrantors in this manner:

ing a warrantor.

4
An interlaced writ for summoning a warrantor, when the vouchee is abiding beyond the county.

Summon by good summoners A. that he be before &c. as above in order to warrant to B. together with C. and D. so much land, &c. as above, so that each writ may correspond with the other, and that in each writ there be mention of each warrantor.

5.
Of essoins after vouching a warrantor.

And on their own day they may essoin themselves together and at the same time or in turns, so that each of them may have a single essoin before they answer to the warranty, unless they appear on the first day and wish gratuitously to answer. But if on the day of the summons the warrantors and the claimant have appeared, but the tenant not so, the assise shall forthwith proceed and be taken by default, if the jurors should be present; and if not, let another day be assigned, and the warrantors, when they have presented themselves up to the fourth day, let them on the fourth day go away quit of their warranty, nor shall the tenant be able further to say anything, wherefore the assise should be stayed. But why does not the claimant recover forthwith and

tens statim & sine assisa per defaltam tenentis? non videtur ratio quare non, sed quia articuli in brevi contenti possent esse falsi, quidam vel omnes, & quamvis res prima facie desinat esse tenentis, oportet tamen petentem docere rationem & jus, quare pertineat ad ipsum. Si autem petens non compareat, expectato quarto die recedet tenens quietus de brevi illo, & similiter waranti. Si autem præsentes fuerint petens & tenens & warantus defaltam fecerit, tunc ante omnia per defaltam waranti inprimis capiatur assisa, nec procedatur versus warantum ad aliquam districtionem per captionem terrarum vel alio modo ante captionem assisæ, & donec sciatur utrum tenens amiserit vel retinuerit per assisam. Si autem retinuerit, tunc non erit necesse procedere contra warantum in placito warantiæ, & unde si primò die capi non possit assisa, sed detur alius dies vel fortè plures pro defectu recognitorum vel per essonium tenentis, & ad diem illum, si ante captionem assisæ venerit warantus & velit warantizare & defendere, audiri non debet, antequam assisa capiatur in modum assisæ, tum quia diem non habet ad warantizandum, tum quia amisit per defaltam suam omnes exceptiones & omnes defensiones suas, & ita quòd non potest defendere, tum quia nescitur ad hoc ante captionem assisæ, utrum oporteat eum de necessitate defendere vel non defendere. Et quòd assisa capi debeat, antequam warãtus respondeat ad warantiam, postquam comparuerit post defaltam, habetis de termino s. M. año regis H. 3. incipiente 4. in coñ Essex. Assisa mortis antecessoris si Brianus pater Henrici, & quia petens recuperaverit per assisam, te-

Britton, *ib.* §§ 7, 8.

f. 258 b.

without an assise through the default of the tenant? There does not seem any reason why not, but because the articles contained in the writ may be false, some or all, and although the thing at first sight ceases to be the tenant's, it is incumbent however on the claimant to show reason and right why it belongs to him. But if the claimant does not appear, after the fourth day has been expected, let the tenant go away quit concerning that writ, and in like manner the warrantors. But if the claimant and the tenant are both present and a warrantor makes default, then before all things let the assise be held in the first place in default of the warrantor, nor let any proceedings be taken against the warrantor by distress by seizing his lands or in any other manner before the holding of the assise, and until it be known whether the tenant has lost or kept the thing by the assise. But if he has kept it, then it will not be necessary to proceed against the warrantor in a plea of warranty, and whereof if on the first day the assise cannot be held, but another day is assigned or by chance several days on account of a failure of recognisors or through the essoin of the tenant, and on that day if before the taking of the assise the warrantor has come and is willing to warrant and to defend, he ought not to be heard before the assise is held in the manner of an assise, as well because he had not a day assigned to him to warrant as because he has lost by his default all his exceptions and defences, and so that he cannot defend, as well because it is unknown before the holding of the assise whether he ought of necessity to defend or not to defend. And that the assise ought to be taken before the warrantor answers to the warranty, after he has appeared after a default, you have in the term of St. Michael in the third and fourth year of king Henry in the county of Essex, an assise of the death of an ancestor, if Brian the father of Henry: and because the claimant recovered by an assise, the tenant proceeded

f. 258 b.

nens processit versus warantum de excambio, & warantus warantisavit & fecit excambium, & alibi in multis locis. Et ideò non est necessaria ejus præsentia antequam venerit per districtionem, cùm tenens amiserit per assisam. Et unde cùm diem non habeat & dicat warantiso, reddo et restituo petenti tenementum, facit manifestè disseysinam tenenti, si hoc fecerit contrà ipsius tenentis voluntatem, quia cùm teneatur tenentem in possessione sua defendere, nec poterit eum disseysire & petēti restituere, quia defendere & restituere contra voluntatem tenentis non possunt simul stare.

6. Si warantus defaltam fecerit, capiatur de terra sua. Britton, *ib.* § 9.

Si autem captio assisæ adjudicata fuerit per defaltam & assisa capta fuerit & tenēs amiserit per assisam, tunc primò procedendum erit versus warantum de warantia q capiatur de terra in manum domini regis ad valentiam terræ quàm tenens amisit et non in eo sensu q tenentem warantisare possit, i. defendere in sua seysina secundùm q warantizatio in uno sensu defensionem habet, et secundùm q in alio sensu tenetur warantus ad excambium, cùm feoffatum suum non defenderit, vel defendere non possit, distringatur hoc modo si terram habuerit in eodem comitatu, q vicecom̃ capiat in manum domini regis de terra waranti ipsius ad valentiam terræ quàm tenens amisit per hoc breve.

7. Breve dum fuerit in seysina.

Rex vicecom̃ salutem. Cape in manum nostram per visum legalium hominum de comitatu tuo de terra A. in balliva tua pro defectu ipsius A. ad valentiam tantæ terræ cum pertinentiis in tali villa quam B. in curia nostra coram justiciariis &c. recuperaverit versus C. per assisam mortis antecessoris inde ibi inter eos

against the warrantor for compensation, and the warrantor warranted and made compensation, and elsewhere in many places. And therefore his presence is not necessary before it has come to a distress, when the tenant has lost by the assise. And hence when he has not a day and says, I warrant, I render and restore to the claimant the tenement, he manifestly causes a disseysine to the tenant, if he has done this against the will of the tenant, for since he is bound to defend the tenant in his possession, he cannot disseyse him and make restitution to the claimant, because to defend and to restore against the will of the tenant cannot be consistent with one another.

6. If the warrantor has made default, let there be taken some of his land.

But if the holding of the assise by default has been adjudged and the assise has been held and the tenant has lost by the assise, then for the first time proceedings shall be had against the warrantor concerning his warranty, that there be taken into the hand of the lord the king as much of his land as shall amount to the value of the land which the tenant has lost, and not in that sense that he can warrant the tenant, that is defend him in his seysine according as warranty in one sense implies defence, and according as in another sense the warrantor is bound to make compensation, when he has not defended his feoffee or cannot defend him, let him be distrained against in this manner if he has land in the same county, that the viscount take into the hand of the lord the king so much of the land of the said warrantor as shall amount to the value of the land which the tenant has lost, by a writ of this kind.

7. A writ when he is in seysine.

The king to the viscount greeting. Take into our hand by the view of loyal men of your county so much of the land of A. in your bailiwick for the default of the said A. up to the value of so much land with its appurtenances in such a vill, which B. in our court before our justiciaries &c. has recovered against C. by an assise

captam, et unde idem C. dum fuit inde in seysina vocavit inde ad warantum prædictum A. versus eundem B. Et sumoneas per bonos sumonitores prædictum A. q sit coram eisdem justiciariis nóstris in tali loco tali die ad prædictum terminum, scilicet de principali placito warantiæ et inde responsurus & ostensurus quare non fuit coram eisdem justiciariis nostris apud talem locum tali die sicut summonitus fuit, & habeas ibi summonitores &c. Si autem terra quæ amittitur et terra quæ tenetur ad excambium fuerint in diversis comitatibus, tunc primò fiat extensio de terra quæ amittitur, ut tantundem capiatur in manum domini regis de terra waranti quæ ad excambium tenetur, secundùm quod inferius de districtione waranti pleniùs dicetur. Item si plures fuerint waranti (ut prædictum est) tunc (facta extensione) capiatur in manum domini regis de terris singulorum proportionaliter quantum ad singulos pertinebit de warantia, secundùm valorem et æstimationem terræ quam tenens amisit per assisam, quæ capta fuit per defaltam ipsius waranti. Et sic videtur quòd habere poterit excusationem de defalta propter impedimenta, vel restituetur per defensionem per legem sicut in causa proprietatis, et ita capi non poterit assisa propter aliquam defaltam, quia nulla erit defalta quæ defendi poterit per legem, & sic non erit ille in defalta qui vocavit, quia secutus est per legem terræ, ita quòd non est in culpa, nec warantus in culpa erit, quia summonitionem defendere poterit per legem terræ, et ideò qui judicaverit assisam esse capiendam per defaltam, quę nulla est, malè aget: et iniquum erit quòd warantus responsiones suas amittit versus petentem et faciat excambium

Britton, *ib.* § 10.

f. 259.

of mortdancester there held thereon between them, and whereof the said C. whilst he was in seysine thereof vouched as warrantor thereof the aforesaid A. against the said B. And summon by good summoners the aforesaid A. that he present himself before our said justiciaries at such a place on such a day at the aforesaid term, to wit, concerning the principal plea of warranty, and thereof to answer and to show wherefore he was not present before our said justiciaries at such a place on such a day as he was summoned, and produce there the summoners &c. But if the land which is lost and the land which is liable for compensation shall be in different counties, then let an extent be made of the land which is lost, that so much may be taken into the hand of the king of the land of the warrantor, which is liable for compensation, according to what will be said below concerning the distraint of a warrantor. Likewise if there be several warrantors (as aforementioned), then, an extent having been made, let there be taken into the hand of the king of the lands of each so much in proportion as shall appertain to each for the warranty, according to the value and the estimate of the land which the tenant has lost by the assise, which has been held in default of the said warrantor. And so it seems, that he may have an excuse for his default on account of hindrances, or he shall be restored by a defence at law as in a cause of property, and so the assise can not properly be held on account of a default, because there can be no default, which can be defended at law, and so he will not be in default, who has vouched him, because he has followed him by the law of the land, so that he is not in fault nor will the warrantor be in fault, because he will be able to defend the summons by the law of the land, and therefore he who has adjudged that the assise should be taken by a default, which is null, will act ill, and it will be inequitable that the warrantor should lose his answers against the claimant and make compensation, f. 259.

cùm defensiones habeat et non sit in culpa. Cùm autem warantus omninò non venerit, vel cùm venerit se excusare non poterit de defalta, tunc primò capiatur assisa per defaltam, ut sciatur an petens jus habeat petendi vel non, vel si habeat q̨ habeat tenens excambium. Si autem non, q̨ tenens retineat per assisam, et warantus quietus de excambio, non enim justum esset q̨ tenens utrunq̨ haberet tenementum q̨ priùs tenuit & excambium, quamvis warantus defaltam fecit. Et ideò in omni casu capienda erit assisa, et semper erit necessarium petenti, q̨ sciat utrum tenens justam habeat causam vocandi warantum vel non.

8. Aliud breve de eodem, dum fuerit in seysina.

Rex vic. salutē. Cape in manum nostram per visum legalium hominum &c. de terra A. per defaltam ipsius A. ad valentiam tertiæ partis vel quartæ tantæ terræ cum ꝑtinentiis in tali villa in tali coñ, quàm B. in curia nostra &c. recuperavit versus eum per assisam mortis antecessoris, et unde idem C. dum fuit inde in seysina, vocavit inde ad warantum A. & B. & D. participes suos, et sum̄oneas per bonos sum̄onitores præfatum A. q̨ sit coram eisdem justiciariis nostris apud talem locum ad præfatum terminum inde responsurus cum prædictis B. et C. & ostensurus quare non fuit &c. ut supra. Et ad quē diem si non venerit, amittet terram captam in manum domini regis per defaltam suam, secundùm quòd assisa fecerit pro tenente vel petente secundùm unum sensum, quidam eorum vel omnes, secundùm quod venerint vel non ad diem illum. Si venerit warantus per districtionem aut statim warantizat, vel dicit se warantizare non debere, quia nihil aliud est dicere in hoc casu, nisi quòd ad excambium non teneatur secundùm unum sensum warantiæ,

when he has defences and is not in fault. But when the warrantor has not come at all, or when he has come, he cannot excuse himself for his default, then let an assise be first taken by default, that it may be known whether the claimant has the right of claiming or not, or if he has, that the tenant has a right to compensation. But if not, that the tenant should retain by the assise and the warrantor be quit of compensation, for it would not be just that the tenant should have both tenements, that which he first held and the compensation, although the warrantor made default. And therefore in every case an assise is to be held, and it will always be necessary for the claimant, that he should know whether the tenant has a just cause of vouching a warrantor or not.

8. Another writ for the same, whilst he is in seysine.

The king to the viscount greeting. Take into our hand by the view of loyal men &c. of the land of A. through the default of the said A. to the value of the third part or the fourth of so much land with its appurtenances in such a vill in such a county, which B. in our court &c. has recovered against him, by an assise of mortdancester, and whereof the said C. when he was in seysine thereof called as a warrantor thereof A. and B. and D. his parceners, and summon by good summoners the aforesaid A., that he be present before our said justiciaries at such a place at the aforesaid term, there to answer with the aforesaid B. and C. and to show wherefore he was not &c. as above. And on which day if he has not come, he shall lose the land seized into the hand of the lord the king through his default, according as the assise has made for the tenant or the claimant according to one sense, some of them or all, according as they have come or not on that day. If the warrantor has come through the distress, he either forthwith warrants or he says that he ought not to warrant, because there is nothing else to say in his case but that he is not bound to make compensation according to one sense of

quia warantizare non potest secundùm alium sensum, i. defendere tenentem in seysina, cùm nullus jam sit in seysina tenens quem defendat. Igitur agendum erit tantùm de excambio, quo casu si se defendere possit, quietus recedet de excambio. Si autem se defendere non possit, tunc statim satisfaciat de excambio suo feoffato, nisi fortè ita sit quòd ulteriùs warantum vocare voluerit, & tunc sumoneatur warantus quòd sit tali die tali loco ad warantizandam tali tantam terrā per tali breve.

9. Breve de summonendo warrantum ad warrantizandum, cum assisa capta fuerit per defaltam warranti.

Rex vic. salutem. Summoneas per bonos sumonitores talem A. quòd sit &c. ad warantizandum B. tantam terram &c. quàm C. in curia nostra &c. clamavit versus D. & quàm idem D. postea amisit per assisam mortis antecessoris inde inter prædictos C. & D. captam. Et unde idem D. dum fuit in seysina vocavit inde ad warantum prædictum B. et qui postea venit et terram illam A. warantizavit, & habeas ibi &c. Ad quem diem si non venerit, procedatur contra ipsum ad defaltam &c. ut supra. Et deinde cùm venerit, aut statim warantizat aut dicit quòd warantizare non debet quia nihil tenet de eo, nec servitium ei facit nec homagium. Item etsi ei warantizare teneret, tamen ipse B. ubi ipse respondisse potuit ad assisam, si ad diem suum venisset, defaltam fecit, & ita quòd per defaltam suam capta fuit assisa, per quam amisit exceptiones & defensiones suas contra assisam, quod sibi ipsi debet imputare. Et si idem A. gratis warantizaverit B. & ulteriùs warantum vocaverit, eadem poterit ei fieri responsio quæ facta est ipsi B. Item esto quòd warantus, cùm ad primum diem defaltam fecerit,

f. 259 b.

Britton, *ib.* § 15.

the warranty, because he cannot warrant according to another sense, that is to defend the tenant in his seysine, since there is no tenant now in seysine, whom he should defend. Therefore the compensation only is to be sued for, in which case, if he can defend himself, he will retire quit concerning the compensation. But if he cannot defend himself, then let him forthwith satisfy his feoffee concerning the compensation, unless by chance it so happen that he wishes further to vouch a warrantor, and in that case let the warrantor be summoned, that he be on such a day at such a place to warrant to so-and-so so much land by a writ of this kind:

9. A writ to summon a warrantor to warrant when an assise has been held by default of the warrantor.

The king to the viscount greeting. Summon by good summoners so-and-so A. that he be present &c. to warrant to B. so much land &c. which C. in our court &c. has claimed against D., and which the said D. has afterwards lost by an assise of mortdancester thereon taken between the above-mentioned C. and D. And whereof the said D., when he was in seysine, vouched as a warrantor the above-mentioned B., and who afterwards came and warranted that land to A., and produce there &c. At which day if he has not appeared let proceedings go on against him to a default &c. as above. And thereupon when he has appeared either he forthwith warrants or he says that he ought not to warrant, because he holds nothing from him, nor does he do service or homage to him. Likewise although he may be bound to warrant for him, nevertheless the said B., when he could have answered at the assise, if he had come on the day assigned to him, made default, and so that through his default the assise was held through which he has lost his exceptions and defences against the assise, which he ought to impute to himself. And if the said A. has gratuitously warranted to B., and further has vouched a warrantor, the same answer may be made to him which was made to the said B. Likewise let it be that a warrantor, when he has made default on

f. 259 b.

ad alium diem ante captionem assisæ, postquam semel adjudicata fuit assisa capienda, de facto warantizaverit ipsi tenenti; & per warantizationem ita consideratum fuerit, quòd si tenens amiserit quòd warantus ei faceret warantiam suam & excambium, & ille idem warantus eodem die alium warantum vocaverit, & capta sit assisa eodem die, postquam petens recuperaverit versus tenentem, statim summonitus fuit secundus warantus ad warantizandum primò: ut in rotulo Sanctæ Trinitatis anno eodem, ad quem diem non venit secundus warantus postquam se essoniaverit, ita quòd præceptum fuit vicecomiti quòd haberet corpus ejus. Et ad quem diem venerit secundus warantus, ut de termino Sancti Michaelis proximo sequente anno eodem, & primus warantus petiit versus eum excambium terræ; quam tenens amisit versus petentem per assisam mortis antecessoris. Et unde idem tenens vocavit ipsum primum warantum ad warantizandum versus petentem, & quia ei warantizavit, & vocavit secundùm warantum versus petentem, & qui venit & noluit respondere ad breve suum nisi curia consideraret, quia ille primus warantus terram illam warantizaverat tenenti, et postea per defaltam suam propriam amisit per assisam, absque eo quod ipsum secundum warantum vocasset ad warantum, dum fuit in seysina, & de sicut per defaltam suam capta fuit assisa, & ita quòd tenens amisit, & ita quòd tenens est nunc extra seysinam, quod quidem primus warantus per attornatum suum cognovit, consideratum fuit quòd secundus warantus non responderet, & quòd primus warantus in misericordia Casus iste inveniri poterit in rotulo de termino Sancti Hilarii anno regis Henrici sexto in comitatu Midd. Assisa mortis antecessoris si Aluricus Huse,

the first day, has in fact warranted to the said tenant on another day before the holding of the assise, after it has been once adjudged that an assise is to be held, and by the act of warranty it was thus held that, if the tenant lost, the warrantor should make good to him his warranty and compensation, and that the same warrantor on the same day has vouched another warrantor, and the assise has been held on the same day, after the claimant has recovered against the tenant, the second warrantor was forthwith summoned to warrant in the first place, as in the Roll of Holy Trinity in the same year, on which day the second warrantor did not come after he had essoined himself, so that it was enjoined to the viscount to produce his person. And on which day the second warrantor has come, as in the term of St. Michael next following in the same year, and the first warrantor has claimed against him compensation for the land which the tenant has lost to the claimant by an assise of mortdancester. And whereof the said tenant has called the said first warrantor to warrant it to him against the claimant, and because he has warranted it to him, and has vouched the second warrantor against the claimant, and who has come and been unwilling to answer to his writ unless the court should so hold, because the said first warrantor had warranted the land to the tenant, and afterwards through his own proper default he lost it by the assise, without his having vouched the said second warrantor to warrant it, whilst he was in seysine, and since the assise was taken through his default, and so that the tenant lost, and so that the tenant is now out of seysine, which indeed the first warrantor knew by his attorney, it was held, that the second warrantor should not answer, and that the first warrantor was amerciable. That case may be found in the Roll of St. Hilary term in the sixth year of king Henry in the county of Middlesex, an assise of mortdancester, if Aluric Huse, who held some land of Matilda

qui terram de Matilda de Albo Monasterio tenuit, & quæ vocavit ad warantum Wilhelmum de Albo Monasterio. Et quod dicitur de defalta unius waranti, cùm unus tantum vocetur ad warantum, illud idem dici poterit de defalta unius vel duorum ex pluribus warantis, quòd capienda est assisa si unus ex pluribus defaltam fecerit. Ex præmissis igitur patet manifestè, quòd cùm warantus defaltam fecerit primo die & adjudicatum sit quòd assisa capiatur per defaltam, & assisa eodem die capi non possit, sed differatur captio usque in alium diem, & warantus tunc venerit per districtionem, vel sine, & warantizare voluerit ante captionem, bene poterit, non tamen ad defensionem ut tenentem defendat, vel quòd aliquid dicat contra assisam, sed ut excambium faciat si tenens amittat per assisam, & multò fortiùs post captionem assisæ, quia tunc non erit quis in possessione quando possit defendere, tenetur tamen ad excambium propter warantiam. Et si ulteriùs per hoc, quod sic warantizavit quoad excambium velit warantum vocare, non proderit ei sicut patet superiùs per exemplum, cùm ex culpa sua non sit in seysina nec quasi, nec etiam suus feoffatus quem warantus suus possit defendere in seysina. Et quòd assisa capi debeat per defaltam waranti statim post defaltam, habetis de termino Sancti Michaelis anno regis Henrici decimo secundo incipiente decimo tertio in com̃ South. Assisa mortis antecessoris, si Robertus filius Cinul de tenemento de Denemede, unde Herbertus filius Richardi, qui terram illam tenuit, vocavit inde ad warantum priorem de S. Lando de Bothomago,[1] qui post essonia sua de ultra mare & citra defaltam fecit. Et unde consideratum fuit quòd assisa procederet per defaltam ipsius prioris, & quia Herbertus ami-

f. 260.

Britton, l. iii. ch. xi. § 16.

[1] "Rothomago," MSS. Reg. 9 E. xv. et Rawl. C. 160.

of the White Monastery, and she called as warrantor William of the White Monastery. And what is said concerning the default of one warrantor, when one only is called to warrant, the same may be said of the default of one or two of several warrantors, that the assise is to be taken, if one out of several has made default. From the premises therefore it is manifestly clear, that when a warrantor has made default on the first day and it has been adjudged that the assise should be held by default, and the assise could not be held on the same day, and the holding of it was deferred to another day, and the warrantor then came through a distress, or without it, and was willing to warrant before the holding of it, he may well do so, not however for the defence that he may defend the tenant, or that he may say anything against the assise, but that he may make compensation if the tenant should lose by the assise, and much more so, after the holding of the assise, because there will not be any one in possession whom he can defend, he is bound however to make compensation on account of the warranty. And if further he wishes to vouch a warrantor for this reason that he has warranted as far as compensation is concerned, it will not profit him, as is evident above by an example, since from his own fault he is not in seysine nor as it were so, nor even his feoffee, whom his warrantor can defend in his seysine. And that an assise ought to be taken by default of a warrantor immediately after the default, you have a case in St. Michael's term in the twelfth and thirteenth years of king Henry in the county of Southampton, an assise of mortdancester, if Robert son of Cinul concerning the tenement of Denemede, whereof Herbert the son of Richard, who held that land, vouched as a warrantor thereupon the prior of St. Lando of Rouen, who after his essoins of beyond the sea and within the sea made default. And whereupon it was held that the assise should proceed by default of the said prior, and because

f. 260.

sit per assisam, habuit recuperare suum versus priorem. Et unde verum est, quòd non erit assisa capienda, nisi tunc demum cùm warantus defaltam fecerit postquam warantum vocaverit, sive warantus venerit sive non, quòd capietur assisa: ut de termino Sanctæ Trinitatis anno regis Henrici decimo septimo in com̃ Buck. Assisa mortis antecessoris si Rogerus de Estwicham, & idem dici poterit de utroque, si warantus & tenens defaltam fecerit. Item si tenens tantum, & warantus præsens sit, vel absens, non refert; quia warantus quietus de warantia, cùm non sit aliquis qui sequatur versus eum. Item esto quòd warantus ad primum diem venerit, & se defenderit de warantia, non est aliquis ipsorum tenentis aut waranti qui dicere possit contra assisam quare remanere debeat: tenens non potuit, quia defensionem suam posuit in warantum, quam quidem resumere non potest. Warantus autem non tenetur dicere contra assisam nec defendere, quia defendit se de warantia, nihil igitur superest nisi quòd per defaltam utriusque capiatur assisa.

10. Si warrantus defaltam non fecerit.

Si autem warantus defaltam non fecerit, sed primo die comparuerit post essonia & dilationes, præsentibus petente & tenente, aut statim warantizat, aut ostendit rationem quare warantizare non debet. Et si statim warantizaverit, respondere poterit contra assisam, & dicere quare remanere debeat imperpetuum, vel ad tempus, cùm omnes habeat exceptiones & defensiones quas principalis tenens haberet, (ut infrà dicetur,) & fortè plures. Et cùm sit quasi tenens, cùm tenentem teneatur defendere in seysina. Et sic potest defendere statim, nisi ipse warantum unum vel plures, quem ad

Herbert lost by the assise, he had his recovery against the prior. And hence it is true, that an assise is not to be held unless then at length, when the warrantor has made default, after he has vouched a warrantor, whether the warrantor has come or not, that the assise should be taken, as in the term of Holy Trinity in the seventeenth year of king Henry in the county of Bucks, an assise of mortdancester if Roger of Estwicham, and the same may be said of both, if the warrantor and the tenant have made default. Likewise if the tenant alone makes default and the warrantor should be present, or if he should be absent, it is not of importance, because the warrantor will be quit of his warranty, since there is no one to sue him. Likewise let it be that the warrantor has come at the first day and has defended himself concerning the warranty, there is not either of the said tenant or warrantor who can say against the assise wherefore it ought to be stayed: the tenant could not because he placed his defence upon the warrantor, which indeed he cannot resume. But the warrantor is not bound to speak against the assise nor to defend, because he defends himself concerning the warranty. Nothing therefore remains except that through the default of both the assise should be taken.

10. If the warrantor has not made default.

But if the warrantor has not made default, but has appeared on the first day after the essoins and the delays the claimant and the tenant being present, he either forthwith warrants, or he shows cause wherefore he ought not to warrant. And if he has forthwith warranted, he can answer against the assise and say wherefore it ought to be stayed in perpetuity, or for a time, since he has every exception and defence which the principal tenant has (as will be explained below), and perhaps more, and since he is as it were a tenant, since he is bound to defend the tenant in his seysine. And so he may defend him forthwith, unless he claims one or more warrantors, whom he wishes to name for his

defensionem propriam velit nominare, petat. Potest enim warantus, cùm warantizaverit & sit quasi dominus litis, warantum ulteriùs vocare, & iste warantus cùm warantizaverit, alium, & sic in infinitum successivè vocare, & qualiter summoneri debent per auxilium curiæ, vel sine, & qualis districtio, sequi debeat summonitionem, facilè patet ex præmissis: hoc tamen adjecto, quòd ille, qui warantizaverit, in brevibus summonitionis & districtionis semper habebitur pro tenente, et de illo cui warantizatum est nulla fiat mentio, sed domi remanebit, donec terminetur placitum inter petentem & warantum, quia subiit defensionem. Et si plures vocati fuerint de waranto in warantum, & ultimus defaltam fecerit, capi debet assisa per defaltam, et per omnia observari debet sicut superiùs dictum est. Item cùm plures sint waranti, et ultimus tenentem defendere non possit, vel si assisa per defaltam waranti capiatur, & ultimus warantus de excambio faciendo se defendere non possit, faciet excambium suo feoffato, & illud idem excambium deveniet ad primum tenementum, de manu in manum, de waranto in warantum, secundùm quod inferiùs pleniùs dicetur de warantis. Si autem unus ex pluribus warantis, vel plures, fuerit infrà ætatem, omnium illorum ætates expectabuntur. Si autem unus ex pluribus petentibus in communi ante captionem assisæ moriatur, non tamen propter hoc cadit breve, nec remanebit assisa mortis antecessoris, ut de itinere W. de Ralegh in comitatu Warr. assisa mortis antecessoris, circa medium rotuli. Illud idem observari debet, ut videtur, si moriatur unus ex pluribus tenentibus simul, & in commuui. Si autem divisa sit hæreditas vel tenementum inter plures participes, quod priùs fuit commune, si unus mo-

f. 260 b.

own defence. For a warrantor, when he has warranted and thus become as it were master of the suit, may vouch a further warrantor, and that warrantor, when he has warranted, may vouch another, and so each may successively vouch another, and in what way they ought to be summoned by the aid of the court or without it, and what distress ought to follow the summons, is easily evident from the premises, with this addition that he, who has warranted, shall always in the writs of summons and of distress be taken to be the tenant, and no mention should be made of the person, to whom the warrant has been given, but he shall stay at home, until the plea is terminated between the claimant and the warrantor, because he has undertaken the defence. And if several are vouched to warrant successively, and the last has made default, the assise may be held by default, and throughout there ought to be observed what has been specified above. Likewise when there are several warrantors and the last cannot defend the tenant, or if the assise is held by default, and the last warrantor cannot defend himself from making compensation, he shall make compensation to his feoffee, and that same compensation shall pass from hand to hand, from warrantor to warrantor, to the first tenant, according as it will be explained below concerning warrantors. But if one out of several warrantors or several shall be under age, the full age of all shall be waited for. But if one out of several claimants in common should die before the holding of an assise, the writ does not fall on that account, nor shall the assise of mortdancester be stayed, as in the iter of William de Ralegh, in the county of Warwick, an assise of mortdancester, about the middle of the roll. The same practice ought to be observed, as it seems, if one out of several tenants together and in common should die. But if the inheritance or tenement should be divided between several parceners, which was formerly held in common, if one dies, the assise and the

f. 260 b.

riatur, cadit assisa & breve. Et quid si vir & uxor simul vocentur de feoffamento uxoris: licet vir moriatur, non tamen propter hoc cadit breve vel e converso. Si autem petens vel tenens vel uterque moriatur, tunc cadit loquela omninò, quasi deficiente fundamento. Si autem unus warantus vel plures ex pluribus moriantur, tunc refert utrum warantizaverit vel non, si autem non warantizaverit, non cadit breve per mortem waranti, sed incipiet tenens vocare suum hæredem de novo. Si autem warantizatum fuerit, secundùm quosdam, cùm warantus sit quasi tenens & principalis, & cùm tenens posuerit in warantum defensionem suam omninò, nec illam resumere possit, quod quidem non est in primo casu, et sic quasi mortuus, & quasi ad placitum cadit breve, & sic alio brevi opus erit. Si autem warantus unus, vel unus ex pluribus, cùm plures successivè vocentur, se defenderit de warantia, quòd warantizare non debeat, nulla alia subsequitur pœna, nisi quòd capiatur assisa per defaltam, & semper tenens conservabitur indemnis per excambium, cùm ei fuerit semel warantizatum. Et quòd assisa sic capi debeat statim per defaltam waranti, habetis de itinere Martini de Pateshul in comitatu Eborum, anno regni regis Henrici decimo. Assisa mortis antecessoris, si Walterus Chamlenger. Ad hoc facit de itinere Wilhelmi de Ralegh in comitatu Buckingham, si Simon de Hokedes, assisa mortis antecessoris, ubi dicitur quòd si warantus warantizare non debeat, quòd nulla subsequitur pœna, nisi quòd assisa capiatur. Et est ratio, quòd warantus in assisa defendere debeat contra assisam, & dicere quare debeat remanere. Sed si nihil f. 261. dicere sciat, procedit assisa, et assisa aufert vel dat in causa possessionis. In causa proprietatis respondet

writ fall. And what if a husband and wife are vouched together concerning a feoffment of the wife, although the husband should die, the writ does not thereupon fall, nor the converse. But if the claimant or the tenant or both should die, then the suit falls altogether, as if the foundation failed. But if one warrantor or several out of several should die, then it is of importance whether he has warranted or not, but if he has not warranted, the writ does not fall through the death of the warrantor, but the tenant shall begin to vouch his heir anew. But if he has warranted, according to some, since the warrantor is as it were the tenant and principal, and since the tenant has placed all his defence upon his warrantor, nor can he resume it, which is not so in the first case, and so he is as it were dead and the writ falls as it were with the plea, and so there is need as it were of another writ. But if one warrantor or one out of several, when several are vouched successively, has defended himself against the warranty, that he ought not to warrant, no other penalty follows except that the assise is held by default, and the tenant will always be kept indemnified by an exchange, when once a warrant has been given to him. And that an assise should be thus forthwith held upon default of a warrantor you have in the iter of Martin de Pateshull in the county of York, in the tenth year of the reign of king Henry, an assise of Mortdancester, if Walter Chamlenger. This is supported by the iter of William de Ralegh in the county of Buckingham, if Simon de Hokedes, an assise of Mortdancester, where it is said that if a warrantor ought not to warrant, that no penalty follows, except that the assise shall be held. And the reason is because the warrantor in an assise ought to defend against the assise, and allege wherefore it should be stayed. But if he knows nothing to allege, the assise proceeds and the assise takes away or gives in a cause of possession. In a cause of property the warrantor answers and shall de- f. 261.

warantus & defendet ipsum jus, & quare petens jus non habeat tenetur docere, quod si facere non possit, amittit tenens, cùm sit indefensus.

11. Si assisa tangat regem, et dicat tenens, quod sine rege respondere non potest. Capiatur nihilominus, sed ponatur judicium in respectum, quousque dominus rex inde præcepit voluntatem suam. Britton, l. iii. ch. xi. § 22.

Item cùm quis warantum ita quasi vocaverit, & dicat quòd sine domino rege respondere non possit, quia tenementum de quo assisa arramata est, teneat ad voluntatem domini regis, capiatur assisa statim, & inquiratur per assisam de seysina antecessoris ipsius petentis & si petens sit hæres propinquior, ut tunc audita domini regis voluntate vel statim recuperet petens, vel differatur judicium pro voluntate domini regis, ut de itinere M. de Pateshul in com̃ Kanc. anno regis H. xii. Assisa mortis antecessoris, si Robertus de Wylington. Item cùm warantus summonitus venerit ad warantizandum, & contentio habeatur de warantia eo quòd homagia & chartæ deducuntur, et ita quòd sine difficultate & dilatione non possit placitum de warantia terminari, quia dubium est utrum tenens possit per assisam retinere vel non, solet assisa capi, ut scire possit cum quo remanere debet seysina, ut secundum hoc procederetur in placito warantiæ, vel non. Assisa mortis antecessoris, si Brianus. Item notandum quod propter incumbramentum tenentis alicujus, non tenetur dominus feoffator warantizare, si ad warantum vocetur, s. ubi antecessor ejus qui petit per assisam mortis antecessoris fuit in seysina post donum factum ab eo qui vocatus est ad warantum, sicut videri poterit. Esto quòd quis aliquem feoffaverit de x. acris, & ille feoffatus suus alium feoffaverit ulterius, qui inde obierit seysitus, hærede suo infrà ætatem existente, si dominus capitalis ceperit illa x. in manum suam, et hæredem non cognoverit ad hæredem, vel illa x. ulte-

ib. § 24.

fend the right itself, and he is bound to show why the claimant has no right, which if he cannot do, the tenant loses, since he is undefended.

11. If the assise touches the king, and the tenant says, that he cannot answer without the king, let the assise be nevertheless held, but let judgment be respited until the lord the king has announced his will thereon.

Likewise when any one has so vouched a warrantor, and has said that he cannot answer without the lord the king, because he holds the tenement, respecting which the assise has been instituted, at the will of the lord the king, let the assise be forthwith held, and let inquiry be made through the assise concerning the seysine of the ancestor of the claimant and if the claimant is the next heir, that thereupon, upon hearing the will of the lord the king, either the claimant may forthwith recover, or judgment be deferred for the will of the king, as in the iter of Martin de Patsshull in the county of Kent, in the twelfth year of king Henry, an assise of Mortdancester if Robert de Wylington. Likewise when a warrantor after summons has come to warrant, and a contention take place concerning the warranty inasmuch as homages and charters are brought forth, and so that the plea of warranty cannot be determined without difficulty and delay, because it is doubtful whether the tenant can retain it or not by an assise, an assise is usually held, that it may be known with whom the seysine ought to remain, that according to this the proceedings should be had in the plea of warranty or not. An assise of Mortdancester, if Brian. Likewise it is to be known, that on account of the encroachment of a tenant, the lord the feoffor is not bound to warrant him, if he be vouched to warrant, to wit, where the ancestor of him who claims by an assise of Mortdancester was in seysine after the donation made by him, who is vouched to warrant, as may be seen. Let it be that a person has enfeoffed another with ten acres, and his feoffee has further enfeoffed another, who has died seysed thereof, his heir being under age, if the chief lord has taken those ten acres into his own hand and has not acknowledged the heir as heir, or has further given

rius alicui dederit, & hæres assisam super eum arramaverit, & talis warantum vocaverit suum feoffatorem, non audietur propter suum proprium incumbramentum. Quis teneatur ad warantiam, & quis non, infrà dicetur pleniùs in tractatu de warantis, in causa proprietatis. Item esto quòd cùm dominus proprietatis vel capitalis terram de qua assisa impetranda erit dederit ad firmam, videndum erit utrum impetrari debeat super firmarium vel super dominum capitalem. Et videtur prima facie super dominum capitalem, quia firmarius nihil habet nisi tantum usum fructum, & proprietarius habet in dominico tenementum. Et ideò quia firmarius non possit tenementum deducere in judicium, sed contra, si impetratum sit super proprietarium, et ipse amittit per assisam, sic amittet fructuarius usum fructum sine regressu versus suum warantum, quod quidem esset iniquum. Re vera impetrari poterit super utrumque, sed non simul, sed per se super proprietarium, cum protestatione tamen ante captionem assisæ, quòd fructuarius de termino suo habeat versus eum regressum. Item si impetretur super firmarium, valebit impetratio, sicut videri poterit per exemplum. Item si capitalis dominus vendat alicui custodiam alicujus terræ, si hæres cùm ad ætatem pervenerit portaverit assisam super tenentem, & cùm sit plenæ ætatis et paratus probare ætatem suam, non erit tenens audiendus, si velit dominum capitalem vocare ad warantum, propter aliquam conventionem inter eos factam, ut si dicat, quòd ei teneatur warantizare usq; ad certū terminū, vel ultra ætatem, & cùm talis conventio nō tangat hæredem, procedat statim assisa, & tenens agat de convētione versus suum warantum, si sibi viderit expedire, quia ille qui petit assisam mortis anteces-

f. 261 b.

those ten acres to another, and the heir has instituted an assise against him, and the said person has vouched his feoffor as his warrantor, he shall not be heard on account of his encroachment. Who shall be bound to warrant and who not in a cause of property, shall be discussed more fully in the treatise upon warranties. Likewise let it be that when the lord of the property or the chief lord shall have granted on a lease the land concerning which an assise is to be sued out, it is to be seen whether it ought to be sued out against the lessee or against the chief lord. And it seems at first sight it should be against the chief lord, because the lessee has nothing but the usufruct, and the proprietor has the tenement in demesne. And for this reason, because the lessee cannot bring the tenement into judgment, but on the contrary, if the writ be sued out against the proprietor, and he loses it by the assise, the lessee would lose his usufruct without any recourse against his warrantor, which would be inequitable. In truth it may be sued out against both, but not together, but separately, against the proprietor, with a protest before the taking of the assise, that the lessee should have recourse to him for his term. Likewise if it be sued out against the lessee, the suing out shall be valid, as may be seen by an example. Likewise if the chief lord should sell to any one the custody of any land, if the heir, when he has come of age, has brought an assise against the tenant, and since he is of full age and prepared to prove his age, the tenant is not to be heard if he wishes to call the chief lord to warrant him on account of an agreement made between them, as if he should say, that he is bound to warrant it to him for a certain term or beyond full age, and since such an agreement does not touch the heir, let an assise at once proceed, and let the tenant bring his action concerning the agreement against his warrantor, if it seems to him to be expedient, because he who claims an assise of Mortdancester claims nothing

f. 261 b.

soris nihil clamat in custodia, nec venditor tenetur ei warantizare nisi custodiam tantum, & non tenementum in dominico.

Cap. VIII.

1. De exceptionibus proponendis contra assisam mortis antecessoris.

Cum autem in assisa mortis antecessoris nullum warantum habuerit, vel cùm habuerit, nullum vocat, quia in propria persona velit potiùs subire defensionem, & ei multæ competant responsiones ex articulis in brevi contentis, exceptiones inprimis proponat illas, dicitur ẽm inprimis, si talis pater vel mater &c. Et unde inprimis videndum est de morte quarum personarum capi debeat assisa, & sciendum quòd de morte patris, & matris, fratris, & sororis, avunculi, & amitæ.

2. De morte quarum personarum capi debet assisa.

Et ita sicut limitatur assisa in certas personas, ita limitatur inter certos gradus, quòd superiùs ascendendo non extenditur ad avum, nec inferiùs descendendo ad nepotem, quia de morte avi nunquam tenebit assisa, nec eodem modo de morte nepotis, licet nepos habere posset assisam de morte avũculi vel amitæ. Item nunquã tenebit assisa inter conjunctas personas fratres & sorores, nepotes & neptes, pronepotes & proneptes, & sic inferiùs descendendo, nec etiam consanguinitas de aliqua hæreditate, vel de aliquo quod descendat hæreditariè de communi stipite, sed tantum breve de recto: tamen versus extraneas personas locum habebit assisa, quatenus se extendat, & quas personas[1] assisa se non extendit locum habebit consanguinitas, quæ omninò trahit originem de assisa, sicut inferiùs pleniùs apparebit.

Britton, l. iii. ch. xii. § 1.

[1] "et ad quas personas," MS. Reg. 9. E. XV.

in his custody, nor is the vendor bound to warrant to him any thing but the custody alone, and not the tenement in demesne.

Chapter VIII.

1\. Of exceptions to be propounded against an assise of mortdancester.

But when the tenant in an assise of mortdancester has no warrantor, or if he has one, he does not vouch him, because he wishes to undertake in his own person his defence, and he is entitled to many answers to the articles contained in the writ, and to many exceptions, let him in the first place propound them, for it is said in the first place, if the father or mother of so and so &c. And hence it is to be seen in the first place concerning the death of what persons the assise should first be held, and it is to be known that it is to be held concerning the death of the father and mother, brother and sister, uncle and aunt.

2\. Concerning the death of what persons the assise ought to be held.

And so, as the assise is limited to certain persons, so it is limited to certain degrees, that in ascending upwards it is not extended to a grandfather, nor in descending downwards to a grandson, because an assise will never hold concerning the death of a grandfather, nor in the same way concerning the death of a grandson, although a grandson may have an assise concerning the death of an uncle or aunt. Likewise an assise will never hold between persons privies in blood, brothers and sisters, grandsons and granddaughters, great-grandsons and great-granddaughters, and so in descent lower, nor even a writ of cosinage concerning any inheritance or concerning any thing which descends by inheritance from a common stock, but only a writ of right, but against outside persons an assise will have place, as far as it will extend, but as regards the persons to whom the assise does not extend, a writ of cosinage will have place, which derives its origin altogether from the assise, as will appear more clearly below.

Cap. IX.

1\. Qualiter petens probare debet suam intentionem.

Proposita autem intentione petentis, oportet eum fundare & probare, scilicet per assisam in modum assisæ, omnes brevis articulos, scilicet quòd talis antecessor cujus seysinam petit, fuit seysitus in dominico suo ut de feodo, & die quo obiit, & quòd post terminum (cum assisa ista sicut & aliæ infrà certum terminum limitatur). Et si in uno articulorum istorum defecerit, cadit assisa, ac si in omnibus defecisset.

f. 262.

2\. De seysina die quo obiit.

Dicitur autem, si talis pater &c. fuit seysitus, seysitus tamen poterit quis esse corpore & animo simul die quo obiit, secundùm quod seysina acquiritur corpore & animo, & ita poterit retinere corpore & animo simul, & corpore tantum sine animo post mortem, donec corpus à seysina efferatur. Item eodem modo retineri possit seysina animo sine corpore ante mortem, verbi gratia. Esto quòd quis peregrè profect⁹ sit, vel ad nundinas, nemine in possessione sua nomine suo relicto, & in itinere antequam redierit moriatur, nihilominus seysitus moritur. Item si per paupertatem possessionis dereliquerit, & ita quod dominus capitalis pro defectu servitii tenementum suum in manum suam ceperit & retinuerit, vel alio excolendum dederit, vel (quod plus est) alium feoffaverit, satis moritur tenens seysitus, quia animo retinet civiliter, licet corporaliter non fuerit in possessione naturaliter, quod tamen non esset, si ei offerenti scilicet domino capitali servitium cum arreragiis dum vixit seysina esset ei denegata, tūc esset disseysitus, & seysitus non moreretur. Item satis seysitus moritur, qui secundo die, vel tertio, vel

CHAPTER IX.

1. In what way the claimant ought to prove his declaration.

But upon the claimant having propounded his declaration, he ought to found it and prove all the articles of the writ, to wit, by an assise in the manner of an assise, to wit, that the said ancestor, whose seysine he claims, was seysed in his own demesne as of the fee and on the day on which he died, and that after a term (since that assise like other assises is limited within a certain term): and if he should fail in any of these articles, the assise falls as if he had failed in all.

f. 262.

2. Of the seysine on the day on which he died.

But it is said, if the father of so-and-so &c. was seysed, but a person may be seysed in body and in mind together on the day on which he died, according as seysine may be acquired with the body and with the mind, so it may be retained corporeally and mentally together, or corporeally only without the mind after death, until the body is carried forth out of seysine. Likewise in the same way the seysine may be retained mentally without the body before death, for instance. Let it be that a person has gone from home or to market, nobody having been left in his name in his possession, and on the way before he has returned, he has died, nevertheless he has died seysed. Likewise if through the poverty of his possession he has abandoned it, and so that the chief lord from default of his service has taken the tenement into his hand and has retained it, or given it to another to cultivate, or what is more, has enfeoffed another with it, the tenant dies sufficiently seysed, because he retains it civilly with his mind although he is not corporeally in natural possession, which however would not be the case, if to him offering to the chief lord the services with the arrears, whilst he was alive, seysine had been denied to him, then he would have been disseysed, and would not have died seysed. Likewise he dies sufficiently seysed, who on the second or third day or further, as

ulteriùs quamdiu licuerit ei qui rejectus est recēter rejicere, vel si in tali languore fuerit constitutus, q sibi perquirere nō possit, ut si fuerit essoniatus de malo lecti, vel in tali infirmitate q memoriam amiserit, quia cum talis animo & corpore semel seysinam acquisivit, & si dum fuit in seysina talis infirmitas supervenerit, quòd memoriam amiserit, quia nunquam durante tali statu poterit desinere animo possidere, & satis moritur seysitus. Idem est, si quis donationem fecerit per chartam, & ita quòd finis & cyrographum in curia domini regis intervenerit cum omni solennitate, si nulla subsequitur seysina, vel minùs sufficiens, ut si donator statum non mutaverit quantum ad usum in toto nec in parte, cùm usus fuerit post donationem per se, vel cum donatorio, in propria persona, vel per suos & ita q donatori⁹ vacuam possessionem non habuerit. Item non refert qualem seysinam antecessor habuerit, vel per disseysinam, vel per intrusionem, vel per dominū, vel per non dominum, & ita q quasi de feodo moriatur seysitus, & unde si ejectus esset dum viveret, seysinam suam recuperare posset per assisam novæ disseysinæ, non tamen ut de libero tenemento, ut si teneret ad vitam, scilicet sibi & hæredibus suis ut de feodo, et hæc est regula generalis. Quis teneat ad vitā et quis in feodo, supra satis videri poterit pleniùs in titulo de donationibus. Item non refert utrum quis moriatur seysitus in propria persona, vel in persona tutoris, vel procuratoris, ut si procurator nomine domini sui stipulaverit et acquisiverit, et dominus suus ratam habuerit acquisitionem cùm sciverit, vel si procurator dño ignorante acquisiverit, & ante seysinam moriatur dñs, satis moritur seysitus, quia factum procuratoris sui nunquam facere poterit irritum. Item &

long as it was allowable for him who has been rejected to reject recently, or if he was established in such languor that he could not claim for himself, as if he had been essoined as bedridden, or in such infirm health that he had lost his memory, for since such a person has acquired seysine with his mind and his body, and whilst he was in seysine such an infirmity overtook him, that he lost his memory, for during such a state he never could cease to possess mentally, and he dies sufficiently seysed. It is the same if any one has made a donation by a charter, and so that a fine and a chirograph in the Court of our lord the King has intervened with all solemnity, if no seysine follows or an insufficient seysine, as if the donor has not changed his status as regards the use of it neither in the whole nor in part, when he has used it after the donation by himself, or in conjunction with the donatory, in his own person or through his agents, and so that the donatory never had a vacant possession of it. Likewise it does not matter what seysine the ancestor had, whether by disseysine or by intrusion, or through the lord, or through one who was not the lord, and so that he died seysed as it were of the fee, and from which if he had been ejected, whilst he was alive, he would have been able to recover his seysine by an assise of novel disseysine, not however as of a freehold, as if he held it for life, to wit, for himself and his heirs as in fee, and this is the general rule. Who holds for life and who in fee may be seen sufficiently above in the title "Of Donations." Likewise it does not matter whether a person dies seysed in his own person, or in the person of a tutor, or of an agent, as if an agent in the name of his principal has stipulated and has acquired, and his principal has ratified the acquisition when he has known it, or if the agent whilst his principal is ignorant has acquired a thing, and the principal dies before seysine, he dies sufficiently seysed, because he never could have made the act of his agent void. Like-

eodem modo ex persona tutoris sicut procuratoris mori poterit quis seysitus, ut si tutor vel custos aliquem minorem recognoverit ad hæredem, & sub nomine talis minoris se posuerit in seysinam, licet minor in propria persona sua possessionem non apprehenderit (quod plerique faciunt) satis moritur seysitus ex seysina custodis, & talem seysinam transmittit ad hæredes, & illud idem dici possit de curatore, qui sub nomine minoris fuerit in seysina ratione socagii, vel ratione feoffamenti. Si autem custos minorem ad hæredem non cognoverit, cùm custos in seysina fuerit hereditatis, licet jus proprietatis ad talem hæredem minorem descenderit & sic obierit, nihil aliud transmittit ad hæredes suos propinquiores nisi id quod ipse habet, scilicet jus merum & proprietatem, seysinam autem quam non habet non transmittit nec jus possessorium. Oportet igitur recurrere ad seysinā ejus, scilicet antecessoris minoris, qui ultimò obiit seysitus, q̄a oportet de necessitate quòd seysina sequatur jus merum, & in fine ibi remaneat, & illud idem dici poterit de majore, quod dicitur de minore.

f. 262 b.

3. De ultima seysina.

Plures ita mori possunt seysiti de una et eadem re ut de feodo, ex diversis feoffamentis. Et unde si ordine debito agant hæredes, & petant quilibet per assisam, in fine redibit seysina sive possessio ad proprietatem, et sic de seysina ejus qui ultimò obiit seysitus erit incipiendum, et de assisa ultima gradatim & per ordinem usque ad primam. Item ad ultimam seysinam erit recurrendum unius videlicet ex pluribus feoffatis simul ex una donatione, quia nullus ex taliter feoffatis de morte alterius habebit assisam, sed hæredes eorum, si talibus fiat donatio et eorum hæredibus, scilicet de morte illius tantum qui ultimus ex omnibus

Britton, l. iii. ch. xii. § 4.

wise and in the same manner a person may die seysed in the person of a tutor as of an agent, and if the tutor or guardian has acknowledged a certain minor as heir, and under the name of such minor has placed himself in seysine, although the minor in his own proper person has not taken possession (which most persons do) he dies sufficiently seysed from the seysine of the guardian, and he transmits such seysine to his heirs, and the same thing may be said of a curator, who under the name of a minor has been in seysine by reason of socage, or by reason of feoffment. But if the guardian has not recognised the minor as heir, when the guardian has been in seysine of the inheritance, although the right of property has decended to the said minor heir, and he has then died, he transmits nothing else to his next heirs except that which he himself has, to wit, the mere right and property, but he does not transmit the seysine which he does not possess nor the possessory right. It is incumbent therefore to have recourse to the seysine of him, to wit, of the ancestor of the minor who died last seysed, because it is incumbent of necessity that the seysine should follow the absolute right, and in the end should rest there, and the same thing may be said of a person of majority, as of minority.

f. 262 b.

3. Of the last seysine.

Several persons may thus die seysed of one and the same thing as in fee from different feoffments. And hence if the heirs proceed in due order, and each claims by an assise, the seysine or possession will finally return to the property, and so a beginning must be made from the seysine of him, who died the last in seysine, and from this last seysine step by step and in order up to the first seysine. And recourse must be had to the last seysine, of one, to wit, out of several enfeoffed together by one donation, because none of such feoffees will have an assise concerning the death of the other, but their heirs, if the donation has been made to the said persons and to their heirs, to wit, concerning the death of him only,

obiit & non de morte aliorum præmortuorum, ut videri poterit si fiat donatio viro et uxori simul & eorum hæredibus, vel concubinæ & pueris suis nominatis, vel non nominatis, et eorum hæredibus, et cùm omnes in seysina fuerint, vel quidam eorum, nullus ex persona alterius vel morte habebit assisam, quia omnes feoffati sunt simul habendi & tenendi, nec totum nec partem separatam, nec per se, sed ut quilibet ipsorum totum habeat cum aliis in communi. Et cùm unus moriatur non descendit aliqua pars hæredi morientis, nec separata, nec in communi ante mortem omnium, sed pars illa communis per jus accrescendi accrescit superstitibus, de persona ad personam usque ad ultimum superstitem: & cùm ille ultimus obierit, tunc primò locum habebit assisa mortis antecessoris in personis hæredum, & sic ad ultimam seysinam, quicunque talium præmoriatur, semper ad ultimam seysinam[1] erit recurrendum. Sed esto quòd hæres per errorem, de morte patris vel matris præmortuæ assisam portaverit, cùm portare deberet de morte ejus qui ultimò obiit, quæritur an restitui possit. Et unde videndum est utrum tempestivè ante captionem se retraxerit vel non. Si autem se retraxerit, ad aliam assisam regressum habebit. Si autem non, quia assisa super assisam, de eadem re, et de eadem morte, non erit capienda, non magis quàm assisa novæ disseysinæ, inter easdem personas, & de eodem facto, sibi ipsi imputet quia erravit. Si autem sic fiat donatio pluribus successivè, scilicet tali & hæredibus suis quos de carne sua procreatos habuerit, & si non habuerit, vel cùm habuerit & defecerint, tunc tali & hæredibus suis eodem modo, & sic de pluribus: si primus, cùm tales habuerit, seysitus moriatur, statim competit assisa suis hæredibus. Si autem nullos omninò habuerit, vel cùm habuerit defecerint, tunc descendit jus ad alios feoffatos, non ex causa succes-

[1] "ultimam assisam," MS. Rawl. C. 160.

who died the last of them all, and not concerning the death of the others predeceased, as may be seen, if a donation be made to a man and his wife together and to their heirs, or to a concubine and her children by name or not by name and to their heirs, and when all have been in seysine or some of them, none shall have an assise from the person or death of the other, because all have been enfeoffed to have and to hold together, neither the whole nor a part separately, nor by themselves, but that each of them should have the whole in common with the others. And when one dies, no part descends to the heir of the deceased, neither separate nor in common before the death of all, but that common part by right of accretion accrues to the survivors, from person to person down to the last survivor, and when that last survivor has died, then for the first time an assise of mortdancester will hold good in the persons of the heirs, and so recourse must be had to the last seysine. Whoever of them may have predeceased, recourse must always be had to the last seysine. But let it be that an heir by error, has brought an assise concerning the death of his father or mother predeceased, when he ought to have brought it concerning the death of him who died last, it is questioned whether he can be restored. And hence it is to be seen whether he has withdrawn himself seasonably before the holding of the assise or not. If indeed he has withdrawn himself, then he may have recourse to another assise. But if not, because an assise upon an assise concerning the same thing and concerning the same death is not to be held, any more than an assise of novel disseysine, between the same persons and concerning the same fact, he must impute to himself that he has missed his way. But if there be thus made a donation to several persons successively, to wit, to so-and-so and his heirs whom he has procreated of his own flesh, and if he has not had any, or when he has had them and they have failed, then to so-and-so and his heirs in the same way, and so concerning several: if

sionis, ut locum habeat assisa mortis antecessoris, sed ex causa primæ donationis, & per modum feoffamenti, & alio brevi opus erit. Item potest quis ita dare q̧ nec ipse nec donatorius nec hæredes ipsorum habebunt assisam mortis antecessoris, ut si quis ita dicit, Do tibi talem rem ad vitam meam. Si donatorius supervixerit donatorem, hæredi donatoris non competit assisa, sed breve ad terminum qui præteriit, cum res donata sit liberum tenementum ipsius donatoris, & terminus ipsi donatorio.

f. 263.

4. Si quis donationem fecerit ad vitam suam alicui tantum sine hærede, vel alicui et hæredibus suis.

Si autem donatorius in vita ipsius donatoris obierit, tunc distinguendum erit utrum donatio facta fuerit donatorio tantum vel donatorio & hæredibus suis, si tantum donatorio, tunc revertitur res donata ad donatorem, ex quo hæredes sui in donatione non sunt comprehensi, quia locū nō invenit per modum donationis, quòd ad alium possit descendere vel reverti quàm ad eum à quo processit. Si autem donatorio & hæredibus suis, si ipse defecerit & hæredes sui in vita donatoris, tunc fiet eodem modo quo superiùs proximo dictum est. Si autem ipse donatorius vel hæredes sui vel ambo supervixerint, tunc revertaī res donata ad donatorem vel hæredes suos per breve de ingressu ut supra. Si autem cùm donatorio & hæredibus suis facta fuerit donatio ad vitam donatoris, si donatorius præmoriatur, hæredes sui ei succedunt jure hæreditario, quamdiu donator vixerit, sicut ad feodum, & post mortem donatoris desinit esse feodum donatorii, & incipit esse feodum donatoris. Si autem sic facta sit donatio ad

the first, when he has had several, dies seysed, his heirs are at once entitled to an assise. But if he has had no heirs at all, or when he has had them, they have failed, then the right descends to the other feoffees, not on the ground of succession, that an assise of mortdancester may take place, but on the ground of the first donation, and by means of a feoffment, and there will be need of another writ. Likewise a person may so give, that neither himself nor the donatory nor the heirs of either shall have an assise of mortdancester, as if a person shall thus say, I give you such a thing for my lifetime. If the donatory has survived the donor, the heir of the donor is not entitled to an assise, but to a writ for the term which has passed, since the thing which was the subject of the donation is a free tenement of the donor himself, and the term is a donation to the said donatory.

f. 263.

4. If any one has made a donation for his lifetime to some one alone without his heir, or to some one and his heirs.

But if the donatory has died in the lifetime of the donor, then a distinction will have to be made whether the donation has been made to the donatory alone or to the donatory and his heirs, if to the donatory alone, then the thing given returns to the donor, since the heirs are not comprised in the donation, for through the mode of donation it does not find place that it can descend to another or return except to him, from whom it has proceded. But if to the donatory and his heirs, if he himself and his heirs have failed during the lifetime of the donor, then it will take place precisely as has been just stated above. But if the donatory himself or his heirs or both have survived, then let the thing which was the subject of donation be restored to the donor or his heirs by a writ of entry as above. But if when a donation has been made to a donatory and his heirs for the lifetime of the donor, if the donatory predeceases, his heirs succeed to him by right of inheritance, as long as the donor may live, as to a fee, and after the death of the donor it ceases to be the fee of the donatory, and it begins to be the fee of the donor. But if the donation be thus made for the lifetime, &c., as above. Likewise

vitam &c. ut supra. Item dicitur in dominico suo videndum est igitur inprimis quæ possunt haberi in dominico. Et sciendum est quòd tam tenementa quàm, redditus, & omnia alia, de quibus haberi possit assisa novæ disseysinæ de libero tenemento, sive teneantur ad vitam sive in feodo: & de his quæ in feodo tenentur, sequitur assisa mortis antecessoris, & datur hæredibus quicunque fuerint in possessione.

5. Quid sit dominicum.

Item dominicum accipitur multipliciter. Est autem dominicum quod quis habet ad mensam suam & propriè, sicut sunt *Bordlandes* Anglicè. Item dicitur dominicum villenagium, quod traditur villanis, quod quis tempestivè & intempestivè resumere possit pro voluntate sua & revocare. Item potest dici dominicum, de quo quis habet liberum tenementum, & alius usum fructum. Item dici poterit dominicum, de quo quis habet liberum tenementum & alius custodiam. Eodem modo dici poterit dominicum, de quo quis habet liberum teñtum & alius curã, sicut dicit̃ de custode & curatore, & unde unus datur à jure & ali⁹ ab homine. Et generaliter qualitercunq, quis feoffatus fuerit in quacunq, hora, in feodo sibi & hæredib⁹ suis, vel si ex causa successionis, ita q assisã novę disseysinæ habere posset, si ejectus esset dum viveret, competit hæredibus suis assisa mortis antecessoris post mortem suam si seysitus moriatur. Et sciendum quòd dominicum dicitur ad differentiam ejus quod tenetur in servitio, & unde dicitur tota die, quòd videndum erit quid quis teneat in dominico, & quid in servitio. Et regulariter verum est, quòd dominicum dici potest, omne illud tenementum, de quo antecessor obiit seysitus ut de feodo, sive cum usu fructu vel sine, & de quo si ejectus esset dum viveret, recuperare posset per assisam

it is said "in his demesne." We must see therefore what things may be held in demesne. And it is to be known that tenements as well as rents, and all other things, concerning which an assise of novel disseysine from a freehold may be held, whether they may be held for life or in fee, and concerning those things which are held in fee, an assise of mortdancester follows, and is allowed to the heirs whoever may be in possession.

5. What is demesne.

Likewise "demesne" is taken in manifold senses. But that is "demesne" which a person has for his own table and as property, such as are "Bordlandes" in English. Likewise a villenage is called "demesne" which is delivered to villeins, which a person may take back and revoke in season and out of season according to his own will. Likewise that may be called "demesne" of which one has the freehold and another the usufruct. Likewise that may be called demesne of which one person has the freehold and another the custody. In the same way a thing may be called demesne, of which one has the freehold, and another the care, as is said of a guardian and a curator, and of whom one is given by the law and the other by man. And generally in whatever way a person has been enfeoffed in whatever hour, in fee to himself and his heirs, or if on the ground of succession, so that he might have had an assise of novel disseysine, if he had been ejected whilst he was alive, his heirs are entitled to an assise of mortdancester after his death, if he died in seysine. And it is to be known that this is called demesne to distinguish it from that which is held under services, and whence it is said throughout the day, that it must be seen what a person holds in demesne, and what under service. And regularly it is true that the term "demesne" may be applied to every kind of freehold of which an ancestor died seysed as in fee, whether with the usufruct or without it, and from which if he had been ejected, whilst he was alive, he, might have recovered by a writ of novel disseysine, although another person might have the usufruct thereof, and

f. 263 b.

f. 263 b. novæ disseysinæ licet alius inde haberet usum fructum, & unde ad declarationem seysinæ antecessoris statim competit hæredi assisa mortis antecessoris, si impeditus fuerit, ut seysinam habeat de tenemento, sicut antecessor suus habuerit, & quod ad hæredem recognoscatur, salvo firmario termino suo. Et si terminus præterierit, & firmarius forte tenementum ultra terminum retinere contenderit, vel illud ad alium infrà terminum vel post transtulerit, competit hæredi assisa novæ disseysinæ si voluerit, & sic de seysina ejus qui infrà ætatem fuerit, si infrà ætatem obierit, competit hæredi suo de morte sua assisa mortis antecessoris, non obstante usu fructu quem firmarius vel custos perceperit, & de quo antecessor minoris die quo obiit seysinam non habuit, nec ipse minor dum vixit, quia etsi in propria persona usus non fuit, tamen utitur per alios qui sunt in seysina nomine suo, quia iste facit, cujus nomine fit, & si non utuntur per se, utuntur per alios, sicut videri poterit de illis qui tenent in villenagio, ipsi utuntur & fruuntur, sed non nomine proprio sed domini sui, & unde licet alius usum fructum habuit die quo obiit antecessor, dici poterit quòd seysitus obiit in dominico suo ut de feodo, habito respectu ad liberum tenementum & ad feodum, & non ad usum, & ita quòd assisa non determinet usum, non magis quàm si tenementum teneretur in villenagio, & poterit quis tenere tenementum in dominico & in feodo, & alius in servitio, vel quoad usum. Item unus tenere poterit in feodo quoad servitium, sicut dominus capitalis, & non in dominico, & alius in feodo & in dominico & non in servitio, sicut liberè tenens alicujus, & unde licet tenens vendat alicui tenementum suum, non tamen ille qui emit intrat in feodum domini capitalis, cùm ipse nihil inde habeat nisi tantum servitium, & nihil in dominico nisi tantum in servitio,

Britton, l. iii. ch. xv. §§ 1, 2.

whence upon the declaration of the seysine of an ancestor the heir is forthwith entitled to an assise of mortdancester, if he has been impeded from having seysine of the tenement like his ancestor has had, and to be acknowledged for the heir, saving to the lessee his term. And if the term has passed away, and the lessee by chance has contended to retain the tenement beyond the term, or has transferred it to another within the term or after it, the heir is entitled to a writ of novel disseysine, if he wishes it, and so concerning the seysine of him who was under age, if he has died under age, his heir is entitled upon his death to an assise of mortdancester, notwithstanding the usufruct which a lessee or a guardian may derive, and concerning which the ancestor of the minor on the day on which he died had not seysine, nor the minor himself whilst he was alive, for although he did not use it in his own name, nevertheless he uses through others who are in seysine in his name, for he does a thing, in whose name it is done, and if they do not use it by themselves, they use it by others, as may be seen concerning those who hold in villenage, they have the use and the fruits, but not in their own name, but in the name of their lord, and hence although another person had the use and the fruits on the day in which the ancestor died, it may be said that he died seysed in his demesne as in fee, regard being had to the freehold and to the fee, and not to the use, and so that the assise does not determine the use, no more than if the tenement was held in villenage; and a person may hold a tenement in demesne and in fee, and another in serfage or as regards the use. Likewise one may hold a tenement in fee as regards a service, as a chief lord, and not in demesne, and another in fee and in demesne and not in service, as the free tenant of any one, and hence although the tenant sells to some one his tenement, he who buys notwithstanding does not enter into the fee of his chief lord, since he has nothing therefrom except so much service, and nothing in demesne excepting so

sed tantum in feodum & dominicum tenentis, & tenens nullam injuriam fecit domino capitali, licet ei damnum faciat, quia habere poterit servitium suum & distringere feodum suum, quicunque illud teneat, & ideò poterit tenens vendere tenementum suum quando voluerit & cui, nisi ab initio inter eos modus adjiciatur ne possit, alioquin faceret tenenti suo disseysinam.

6. Quid sit feodum.

Item dicitur (ut de feodo) quod quidem oportet petentem probare sicut alios articulos. Videndum est igitur quid teneatur in feodo & quid sit feodum. Et sciendum quod feodum est id, quod quis tenet ex quacunque causa sibi & hæredibus suis, sive sit tenementum sive redditus, ita quod redditus non accipiatur sub nomine ejus qui provenit ex camera alicujus, sicut alibi plenius dictum est supra de assisa novæ disseysinæ. Item dicitur feodum alio modo ejus qui alium feoffat & quod quis tenet ab alio, ut si qui dicat, talis tenet de me tot feoda per servitium militare. Et unde ex præmissis colligi potest, quòd unus potest esse seysitus de aliqua terra vel redditu in dominico suo ut de feodo, & de libero tenemento simul, vel tantum ut de feodo vel non in dominico, vel tantum ut de libero tenemento & in dominico, non tamen in feodo, sicut dici poterit de illis qui tantum tenent ad vitam quacunque ratione. Et eodem modo potest quis esse seysitus ut de feodo & de libero tenemento quoad proprietatem & in dominico, & alius ad nullum istorum sed quantum ad usum fructum, sicut firmarius sive fructuarius, qui tenet ad certum terminum annorum. Item dicitur (ut de feodo) ita quòd (ut) ponatur pro (quasi) & denotet similitudinem, vel quòd (ut) denotet ipsam veritatem. Ipsam veritatem, sicut de ipsis dici poterit qui justum habent titulum & justam causam possidendi ab eis qui jus habent conferendi & tunc pro (sicut) ut supra. Item similitudinem, pro

f. 264.

much in service, but only into the fee and demesne of the tenant, and the tenant does no injury to the chief lord, although he may cause him loss, because he may have his service and distrain his fee, whoever holds it, and therefore the tenant may sell his tenement when and to whom he may wish, unless from the commencement a mode has been added between them that he cannot, otherwise he may disseyse his tenant.

6. What is a fee.

Likewise it is said "as of a fee" which it is incumbent for the claimant to prove just as the other articles. It is to be seen therefore what is held in fee and what is a fee. And it is to be known that a fee is that which any person holds from whatever cause for himself and his heirs, whether it be a tenement or a rent, so that the rent is not received under the name of that which is derived from the chamber of some one, as has been explained more fully above, concerning an assise of novel disseysine. Likewise a thing is said in another manner to be a fee of that person who enfeoffs another, and which a person holds from another, as if there be one who says, so-and-so holds so many fees from me by military service. And hence from the premises it may be gathered, that one person may be seysed of a certain land or rent in his own demesne as in fee and as a freehold at the same time, or only as in fee and not in demesne, or only as a freehold and in demesne, not however in fee, as may be said of those who hold only for life for whatever reason. And in the same manner a person may be seysed as in fee and in the freehold, as regards the property, and in demesne, and another in none of these but only in the usufruct, as a lessee or fructuary, who holds for a certain number of years. Likewise it is said "as in fee" so that "as" is used for "as if" and denotes similitude, or that "as" denotes the truth itself. The truth itself, as may be said of those who have a just title and a just cause of possession from those who have a right of conferring, and then it is used for "just as," as above. Like-

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(quasi) sicut de illis dici poterit qui ingrediuntur sine causa & sine justo titulo, vel frater postnatus antenato excluso, vel soror propria autoritate & per donationem factam à non domino. Item si per conditionem, ita quòd talium ex fortunæ insidiis dependeat seysina. Item si bastardo fiat donatio & hæredibus suis, & cùm nullum habeat de corpore suo, ingrediatur filius suus bastardus, & uxorem ducat, & hæredes habeat de corpore suo, si tales moriantur in seysina, moriuntur seysitì in dominico suo ut feodo, & ibi accipitur (ut) pro quasi.

7. Die quo obiit.

Item dicitur die quo obiit, vel die quo habitum religionis assumpsit. Item die quo iter peregrinationis arripuit, in quo itinere obiit, unde videndum erit de die qualiter dies accipiatur. Est enim dies solaris & dies lunaris, secundùm quod Deus divisit lumen à tenebris, ex quibus duobus diebus efficitur unus dies, qui dicitur artificalis ex die præcedente & nocte subsequente, qui constat ex xxiiii. horis. Hora autem fit ex quadraginta [1] momentis.

infra, f. 359 b.

8. Qualiter accipitur dies.

Dies autem artificialis dividitur in quatuor partes. Et est una pars quæ incipit in crepusculo, & terminatur ad mediam noctem: & alia quæ incipit a media nocte, & terminatur in aurora: & tertia quæ incipit ab aurora, & terminatur in meridie: & quarta quæ incipit à meridie & terminatur ad noctem, & quælibet pars in se continet sex horas. Et unde sive quis obierit die solari sive lunari, moritur eodem die artificiali, qui pro uno die computatur. Et unde quacunq; hora obierit quis tali die artificiali, sive die sive nocte, moritur semper quasi in die. Et unde non est necesse apponere in brevi nocte qua obiit, quia semper

Britton, l. iii. ch. xvii.

[1] "quadraginta." This reading in letters is also found in MS. Rawl. C. 160; but in MS. Rawl. C. 159 the reading is in numerals, sc. xl^ta. Concerning the legal division of the hour into forty moments, which was known to Accursius, see the Introduction.

wise similitude for "as if," as may be said of those who enter without a cause and without a just title either a second brother to the exclusion of a firstborn, or a sister of her own authority and by a donation made by one who is not the owner. Likewise if through a condition, so that the seysine of such persons depends upon the snares of fortune. Likewise if a donation be made to a bastard and his heirs, and when he has none of his own body, his son who is a bastard enters and marries a wife and has heirs of his body, if such persons die in seysine, they die seysed of the demesne as in fee, and there "as" is construed "as if."

7. On the day on which he died.

Likewise it is said, "on the day on which he died," or "on the day on which he assumed the religious dress." Likewise "on the day on which he commenced a foreign "journey, in which journey he died," hence we must see concerning the day in what sense the term "day" is received. For there is a solar day and a lunar day, according as God has divided the light from the darkness, out of which two days one day is made up, which is called an artificial day made up of the preceding day and the following night, which consists of twenty-four hours. But an hour is made up of forty moments.

8 In what sense a day is accepted.

But the artificial day is divided into four parts. And there is one part which begins with the nightfall, and ends with midnight, and another which begins at midnight and ends at daybreak, and a third which begins with daybreak and terminates with midday, and a fourth which begins at midday and terminates at nightfall, and each part contains in itself six hours. And hence if a person dies in the solar day or in the lunar day, he dies on the same artificial day, which is computed as one day. And hence at whatever hour a person has died on such an artificial day, he dies always as it were on the day. Hence it is not necessary to insert in the writ the night on which he died, because he always dies on

morit die artificiali. Ad hoc autem quod hæres seysinam antecessoris sui recuperet per assisam qualem habuit antecessor, sufficit (ut quidam dicunt) quòd talis antecessor suus aliqua hora diei illius in seysina extiterit, licet ante mortem suam aliqua hora diei tenementum illud ex causa donationis, vel alia qualicunq, ad alium transtulerit, tum propter brevem seysinam, tum quia die quo obiit aliqua hora in seysina fuit. Et unde dicunt, quòd hoc satisfactum est brevi & assisæ, nec est necesse (ut dicunt) inquirere utrum talis seysitus obierit necne, ex quo in brevi non distinguitur. Sed revera (quicquid dicatur) videndum erit utrum seysitus obierit necne, quia cùm dicat die quo obiit seysitus, oportet quòd seysitus obierit, alioquin cadit assisa, sicut videri poterit manifestè. Quia esto quòd quis in crepusculo vel aurora seysitus fuerit de aliquo tenemento, ut de libero tenemento suo & in dominico suo ut de feodo, & tenementum illud dederit alicui & transtulerit animo donandi, & ille cui datum fuerit illud recipit animo retinendi & possidendi, & jus conjunctum simul cum seysina in persona donatorii, statim facit liberum tenementum ei qui recipit & dominicum, & nihil remanet cum donatore, nisi tantum nudum dominium, cùm uno tempore & una hora transferat quicquid habet ad donatorium, si talis sic feoffatus aliqua hora diei vel noctis fuerit in seysina.

f. 264 b.

9\. Si de usu seysinæ in assisa queratur, de hoc non est curandum.

De usu vero, si donatorius non statim utatur non est multum curandum, quia potest quis sufficientem habere seysinam, licet non statim utatur. Nec multum est de substantia, sed aliquando vestimentum probet, & post imaginariam donationem seysinam declarat, quod quidem faciat, & eodem modo captio expletiarum.

the artificial day. But with the object that the heir should recover by the assise the seysine of his ancestor such as his ancestor had, it is sufficient (as some say) that such a person his ancestor was in seysine at some hour of that day, although before his death at some hour of that day he may have transferred that tenement by way of donation or in some other way to another, as well on account of his brief seysine, as because he was in seysine on some hour of the day on which he died. And hence they say, that by this the writ and the assise is satisfied, nor is it necessary (as they say) to inquire whether such person died seysed or not, since no distinction is made in the writ. But in truth (whatever may be said) it is to be seen whether he died seysed or not, because when it says on the day on which he died seysed, it is incumbent that he should have died seysed, otherwise the assise falls, as may be clearly seen. Because let it be that at nightfall or at daybreak a person was seysed of a tenement as his freehold and in demesne as in fee, and he gave that tenement to a certain person and transferred it with the intention of making a donation of it, and he to whom it was given receives it with the intention of retaining it and of possessing it, and the right conjoined together with the seysine in the person of the donatory at once makes it a freehold to him who receives it and a demesne, and nothing remains with the donor, except the bare demesne, since at one time and at one hour he transfers whatever he has to the donatory, if such a person so enfeoffed has been in seysine at any hour of the day or night.

f. 264 b.

9. **If a question is raised in the assise concerning the use of the seysine, no attention is to be paid to it.**

But concerning the use, if the donatory does not immediately use it, it is not of much significance, because a person may have a sufficient seysine, although he does not use it. Nor is it much of the substance, but sometimes the clothing proves it, and after an imaginary donation makes clear the seysine, which indeed the taking of the profits does [make clear] and in the same

Et eodem modo quo seysina juncta juri liberum facit tenementum vero hæredi, cùm descendat hæreditas ad eum statim & sine mora in ipsa conjunctione, ita facit seysina juncta cum jure statim liberum tenementum, si conjuncta transferatur ad alium per eum qui dare potest, & qui omnia habet, scilicet seysinam & jus & liberum tenementum, & qui hæc omnia habet, omnia statim transferre potest & sine mora si velit, sine aliqua retentione vel exceptione, vel quòd ei nihil remaneat præter solum nudum dominium. Et cùm ita transtulerit (facta traditione) statim quasi nudus recedit, nihil secū portans præter nudum dominium, & donatorius (facta traditione) sic existens in possessione vacua, nihil possessioni suæ contrarium inveniens vel rebelle, statim in ipsa hora habet liberum tenementum, secundùm quod videri poterit manifestè. Esto quòd donatio facta sit mane, & donatorius in seysina usq; ad horam primam vel tertiam, & donator facta traditione recesserit, & postea pœnituerit se fecisse donationem, & statim revertatur post horam tertiam volens ingredi, non admittatur, violentiam adhibens violenter repellatur, queritur per assisam quòd injustè sine judicio sit ejectus, respondet donatorius ad assisam quòd non, quia gratis dedit, et gratis tradidit et gratis exivit, et quòd non sit ei injuriatum, quia hoc voluit. Videtur igitur quod assisa novæ disseysinæ remanere debeat, non obstante aliqua exceptione teneræ seysinæ: cùm talis exceptio contra factum proprium donatoris locum habere non debeat, quamvis in suo casu locum habeat contra factum alienum. Et unde videtur, quòd

manner. And in the same way in which the seysine joined to the right makes a freehold to the true heir, when the inheritance descends to him forthwith and without delay in the very conjunction, so the seysine joined with the right makes forthwith a freehold, if when conjoint it is transferred to another by him who has power to give, and who has every thing, to wit, the seysine and the right and the freehold, and he who has all these may forthwith transfer them all and without delay, if he wishes, without any retention or exception, or because nothing remains for him but only the nude dominion. And when he has so transferred (the transfer having been made), forthwith he withdraws as it were naked, carrying away with him nothing but the bare demesne, and the donatory (upon the transfer having been made) being thus established in the vacant possession, finding nothing contrary to or rebellious against his own possession, forthwith at the very hour has the freehold, according to what may be seen clearly. Let it be that the donation may be made in the morning, and the donatory has been in seysine at the first or the third hour, and the donor having made the transfer has withdrawn, and has afterwards repented that he had made the donation, and returns forthwith after the third hour, wishing to enter, and he is not admitted, in applying violence he is repelled with violence, he complains by an assise, that he has been unjustly ejected without a judgment, the donatory answers to the assise that it is not so, because he has given it of his own accord and he has transferred it of his own accord and has gone forth from it of his own accord, and that no injury has been done to him, because he so willed it. It appears therefore that the assise of novel disseysine ought to be stayed, notwithstanding any exception of a tender seysine, since such an exception cannot have place against the proper act of the donor, although in his case it would have place against the act of another. And

ea ratione qua cadit assisa in persona donatoris, eadem ratione tenere debet et procedere pro donatorio, ad recuperandum, si fortè donator ipsum ejiciat sine judicio in eodem casu. Sequit̃ ergo ex præmissis, q̱ tam modicum tempus sufficit ad habendum liberum tenementum, et q̱ de uno et eodem die possunt esse seysiti ut de feodo et diverso tempore, et quod de uno dicitur, de duobus vel pluribus dici poterit, si prædicto modo quacunq; hora diei fuerint in seysina et in seysina obierint. Et unde mortuo donatore eodem die donationis, et donatorio vel pluribus donatoriis, si tenementum successivè ex causa donationis ad plures de persona in personā translatum fuerit et eodem die moriantur, et unde si omnes hæredes versus capitalem dominum seysinam antecessorum suorum petierint per assisam, videndum erit quis eorum præferatur, si dicatur quòd hæres primi donatoris, quia fuit in seysina antecessor suus aliqua hora diei, illud idem dici poterit de hærede primi donatorii & secundi, quia antecessores eorum fuerint in seysina aliqua hora diei, & sic deinceps de aliis. Ad quod responderi poterit, quòd re vera ille præferri debeat aliis, cujus antecessor fuit in seysina aliqua hora diei & seysitus obiit, hoc etiam videri poterit manifestè de eo cujus antecessor fuit in seysina aliqua hora diei & obiit seysitus, aut iter peregrinationis seysitus assumpsit in quo itinere obiit, quia poterit hodie iter arripere & eodem die de quo profectus fuerit vel in crastino, poterit dare et secundo die mori, et ideò licet aliqua hora diei quo iter assumpserit seysitus fuerit, tamen nullam seysinam transmittit ad hæredes, quia seysitus non moritur. Et hoc dico si donatorius post donationem aliqua hora diei per traditionem in seysina fuerit. Illud etiam dici

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hence it appears that for the reason for which the assise abates in the person of the donor, for the same reason it ought to hold good and proceed on behalf of the donatory, in order to recover, if by chance the donor has ejected him without a judgment in the same case. It follows therefore from the premises, that so moderate a time suffices to hold a freehold, and that on one and the same day they may be seysed as in fee and at a different time, and that what is said of one person may be said of two or more, if in the aforesaid manner they have been in seysine at any hour of the day and have died in seysine. And hence upon the donor having died on the same day of the donation, and the donatory or several donatories, if the tenement has been transferred successively by way of donation to several persons from person to person, and they die on the same day, and thereupon if all the heirs claim against the chief lord the seysine of their ancestors by an assise, it is to be seen who of them should be preferred; if it be said that the heir of the first donor, because his ancestor was in seysine at some hour of the day, the same may be said of the heir of the first donatory and of the second, because their ancestors were in seysine at some hour of the day, and so in succession of the others. To which it may be answered, that in truth he ought to be preferred to the others, whose ancestor was in seysine at some hour of the day and died whilst so seysed, or undertook a journey of pilgrimage whilst seysed, in which journey he died, because he might to-day commence a journey, and on the same day on which he set forth or on the morrow he might give the thing, and on the second day might die, and therefore although he was seysed at some hour of the day on which he commenced his journey, nevertheless he transmitted no seysine to his heirs, because he does not die whilst seysed. And this I say, if the donatory after the donation was in seysine by delivery at any hour of the day. This also may be said of him whose

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poterit de eo cujus antecessor habitum religionis assumpsit, & eodem die in seysina extiterit, & eodem die ante assumptionem habitus dederit, hæres ejus nihil capiat per assisam, quia antecessor seysitus habitum non assumpsit, & unde videtur (& verum est) quòd nullus per assisam obtinebit, nisi hæres ille cujus antecessor seysitus obiit. Et sciendum quòd ille, qui dat & qui dare potest, transfert jus quod habet, sive fuerit jus possessorium sive jus merum, hoc est si dederit proprium statim facit liberum tenementum, si autem alienum, non sic. Quæ autem seysina dici debeat firma & bona & quæ tenera, supra videri poterit in titulo de donationibus, ubi inveniri poterit de hac materia.

10. De termino.

Item fit mentio de termino, & tunc fiant ea quæ supra in aliis assisis. Item continetur in brevi (& si talis sit hæres propinquior), ad quod videre oportet de differentia & qualitate hæredis, de legitimo vero & bastardo pertinet ad tractatum de bastardia, ut infrà dicetur pleniùs, ubi apponitur[1] bastardia in modum exceptionis. Item primus sive propinquior hæres dici poterit, quem nemo antecedit, supremus quem nemo sequitur. Item hæredis appellatio non solum ad proximum hæredem sed ad ulteriores refertur, nam & hæredis hæres deinceps hæredis appellatione continentur.[2] Sed tamen hîc tangendum erit in parte qui sunt filii & hæredes, & qui filii & non hæredes, & qui nec filii nec hæredes. Et unde sciendum, quod liberorum quidam sunt filii & hæredes, sicut sunt illi qui ex justis nuptiis procreati sunt & progeniti, à patre & matre vel altero ipsorum hæreditatem habentibus, quia hæres dicitur ab hæreditate & non hæreditas ab hærede. Item e converso filii & non hæredes, ut si nulla sit

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[1] "opponitur," MS. Rawl. C. 160. | [2] "continctur," MS. Rawl. C. 160.

ancestor assumed the religious habit, and on the same day was in seysine and on the same day before the assumption of the habit gave the thing, his heir shall take nothing by an assise, because his ancestor did not assume the habit when seysed, and hence it appears (and it is true) that no one shall obtain by an assise, except the heir, whose ancestor died whilst seysed. And it is to be known that he, who gives and who can give, transfers the right which he has, whether it was a possessory right or a mere right, that is, if he has given his own property, he forthwith makes it a freehold, but if another person's property, not so. But what seysine ought to be called firm and good and what tender, may be seen above in the title concerning donations, where there may be found a discussion on this matter.

10. Concerning a term.

Likewise there is mention of a term, and then let those things be done, which have been mentioned above in other assises. Likewise there is contained in the writ "and if "such person be the next heir," in regard to which we must see concerning the difference and the quality of an heir, but concerning a true heir and a bastard it appertains to the treatise on bastardy, as will be explained more fully, where bastardy is objected in the manner of an exception. Likewise he may be called the first or the next heir, whom no one precedes, the last whom no one follows. Likewise the appellation of heir is not only referred to the next heir, but to more remote heirs, for the heir of an heir in succession is contained under the appellation of an heir. But here we must touch in part who are sons and heirs, and who are sons and not heirs, and who are neither sons nor heirs. And hence we may know, that of children some are sons and heirs, such as are those who are procreated and begotten out of lawful marriage, from a father and mother or one of them having an inheritance, because the heir is so called from the inheritance, and not the inheritance from the heir. And likewise conversely sons and not heirs, as if there

hæreditas descendens nec ex parte patris nec ex parte matris. Item poterit esse hæres ex parte patris tantum & filius, cùm hæreditas tantum descendat à patre & non à matre, & sic filius matris & non hæres & e contrario : si hæreditas descendat tantum ex parte matris, si autem ex parte utriusq, tunc erit filius & hæres utriusq. Item sicut ab initio poterit quis esse filius et hæres unius vel utriusq ipsorū (ut prædictū est), eodem modo desinere possit esse filius & hæres, ut si pater & mater, vel eorū alter totam dederint hæreditatem, nihil relinquentes heredi nec in dominico nec in servitio, cum is quasi sine causa hæres dicebatur, cùm jam non subsistat. Item ubi quis primò genuerit filiam qui hæres dici possit propinquior, si masculus supervenerit, desinit esse hæres. Item ubi filia hæres fuerit & per se, aliis filiabus supervenientibus non erit hæres per se, sed cum aliis in communi. Item hæredum quidam sunt propinqui cum propinquioribus, sicut frater vel soror patris vel matris cum eorum filiis vel filiabus. Item propinquiores sunt filii vel filiæ, confratres vel sorores in linea transversali, cùm sint in linea recta descendente à patre vel matre, quia omnes hæredes in linea recta descendentes excludunt à successione omnes transversales. Item in linea recta descendente sunt propinqui & propinquiores, ut si plures filii venientes ab eo à quo descendit hæreditas, omnes quidem sunt propinqui, sed antenatus propinquior propter ætatem.

f. 265 b.

11. De qualitate hæredum.

Item si unus filius vel plures, vel unus filius & plures filiæ, si plures filii & una filia vel plures, masculi semper erunt propinqui cum primogenito, & filiæ hæredes remoti. Si autem nullus masculus cum pri-

be no inheritance descending, neither on the side of the father nor on the side of the mother. Likewise he may be heir on the side of the father alone and son, when the inheritance descends to him only from the father and not from the mother, and so he would be the son of his mother and not her heir, and contrariwise, if the inheritance descended only from the side of the mother, but if from the side of each, then he will be the son and heir of each. Likewise, as from the commencement a person may be the son and the heir of one or each of them as aforesaid, in the same way he may cease to be the son and the heir, and if his father and mother, or one of them, has given away the entire inheritance, leaving nothing for the heir neither in demesne nor in service, when he as it were without a cause was called heir, when already it does not exist. Likewise where one has begotten a daughter, who may be called the next heir, if a male is born after her, she ceases to be heir. Likewise where a daughter has been heir and by herself, upon other daughters being born she will not be heir by herself, but in common with others. Likewise of heirs, some are near with nearer heirs, as a brother or sister of a father or a mother with their sons or daughters. Likewise, sons and daughters are nearer heirs [than] brothers and sisters in a transverse line, since they are in a right line descending from the father or mother, because all heirs descending in a right line exclude from the succession all transverse heirs. Likewise in a right line descending there are near and nearer heirs, as if there are several sons coming from him from whom the inheritance descends, they are all near heirs, but the first-born is the next heir on account of his age.

f. 265 b.

11. Of the quality of heirs.

Likewise if one son or several, or one son and several daughters, if there are several sons and one daughter or more, the males will always be near heirs with the first-born son, and the daughters will be remote heirs. But if there be no male with the first-born son, but only

mogenito, sed tantum filia vel filiæ, tunc erunt filiæ hæredes propinqui cum masculo, & masculus propinquior antecessori propter sexum. Item si plures sint filii & hæreditas descendens partibilis sit, omnes sint propinquiores ratione hæreditatis quæ in se habet partitionem, & si filiæ sint, sunt hæredes pròpinqui. Si autem nullæ, tunc frater vel soror antecessoris, si autem plures sint filiæ, licet hæreditas ex se non habeat partitionem, tamen partitur ratione filiarum, quæ sunt quasi unus hæres, & in quo casu, quælibet illarum est hæres propinquior antecessoris, frater verò & soror propinqui. Item sunt propinqui & propinquiores, ita sunt remoti & remotiores. Remoti verò post propinquos, scilicet fratres, sorores, avunculos vel amitas, sunt eorum filii vel filiæ, nepotes scilicet & neptes, remotiores verò eorum filii vel filiæ, sicut pronepotes & proneptes, & sic deinceps eorum filii & filiæ in infinitum. Et sic perpendi poterit, quis sit hæres propinquior & qua ratione. Et sciendum quod aut sexus, aut ætas, aut linea, aut hæreditas partibilis, aut pluralitas fæminarum facit hæredes propinquiores, quantum ad jus successionis; non autem quantum ad jus sanguinis, secundùm quod inferiùs dicetur. Item sunt propinquiores, quantum ad jus & quantum ad seysinam, quia seysinam semper sequi debet jus. Et eo deficiente qui propinquior est antecessori, sive propinquior sit per se, sive cum alio, sine hærede de corpore suo, & incipit postnatus post eum esse propinquior antecessori qui in seysina est, & à quo descendit jus hæreditatis ad ipsum, & sic deficientibus propinquioribus successivè, cùm semel inceperint esse quilibet post alterum vivente antecessore, semper incipit esse hæres propinquior ei qui est in possessione hæreditatis, hæres qui fuit priùs antecessori propinquus, sive in linea recta descendente,

a daughter or daughters, then the daughters will be near heirs with the male, and the male nearer to the ancestor on account of his sex. Likewise if there be several sons and the descending inheritance is shareable, they are all next heirs by reason of the inheritance, which is capable of partition, and if they are daughters they are near heirs. But if there are none, then the brother or sister of the ancestor, but if there are several daughters, although the inheritance is not of itself shareable, nevertheless it is shared by reason of the daughters, who are as it were one heir, and in which case each of them is the next heir of the ancestor, but the brother and sister are near heirs. Likewise there are near and nearer heirs, so there are remote and more remote heirs. Remote heirs indeed after near heirs, to wit, brothers, sisters, uncles and aunts, and their sons or daughters, grandsons, to wit, or grand-daughters, but still more remote are their sons and daughters, to wit, the great-grandsons, and great-granddaughters, and so in succession their sons and daughters to infinity. And so it may be well weighed, who is the next heir, and for what reason. And it is to be known that either sex or age or line or a shareable inheritance or a plurality of females makes heirs nearer as regards the right of succession, but not as regards the right of blood, according to what will be explained below. Likewise they are nearer as far as regards right and as regards seysine, because right ought always to follow seysine. And when he fails who is nearer to the ancestor, whether he be nearer alone or with another, without any heir of his body, and the next born after him begins to be nearer to the ancestor who is in seysine, and from whom descends the right of inheritance to himself, and so the nearer heirs failing successively, when once they have begun to be heirs one after another during the lifetime of the ancestor, the heir who was previously next to the ancestor always begins to be the nearer heir to him who is in possession of the inheritance, whether he is in a

sive in linea transversali: ita tamen quòd linea recta semper excludat transversalem, & sicut ex præmissis perpendi poterit manifestè. Item si descendat hæreditas ad primogenitum non habentem hæredem ex se, incipiunt fratres sui postnati vel sorores ejus esse hæredes sui propinqui, & desinunt esse hæredes patris communis vel alterius antecessoris. Sed tamen primogenitus post eum incipit esse propinquior, quia senior. Et generaliter verum est, quòd ille propinquior est hæres in omni casu ad quem jus merum descendit, sive sit verus hæres sive pro hærede, sive loco hæredis, sicut est dominus propter feloniam tenentis sui, quia nullus potuit esse propinquior, qui jus merum habuit.[1] Et eodem modo tenendum erit de remotis hæredibus in infinitum, sicut dicitur de propinquis, de quibus infrà pleniùs dicetur de successoribus.

f. 266.

12. De hoc, quod dicitur in brevi, summoneas &c. tales, qui tenent, &c.

Dicitur etiam in brevi. Sūmoneas &c. talem vel tales qui terram illam vel redditū tenent, &c. Et unde videndum an totum teneant sicut antecessor tenuit vel ejus partem & non totum, secundùm quòd antecessor tenuit, cujus seysinam ipsi hæredes petunt. Et sciendum quòd multipliciter poterit esse illud totum, vel potest peti illud totum sub uno toto, ut si quis petat aliquod manerium cum pertinentiis vel alio modo, vel decem libratas terræ cum pertinentiis, vel unam carucatam terræ cum pertinentiis vel alio modo, & non refert utrum hoc faciat, an per simile. Et unde cùm petens visum facere debeat juratoribus, oportet q̧ juratores videant quid & quantum posuerit in visu suo, & utrum totum q̧ ipse antecessor tenuit, & secundùm q̧ tenuit, vel non, quia totum debet petere p̧ assisam q̧ antecessor tenuit, & secundùm q̧ tenuit, vel excipere

[1] "non habuit," MSS. Reg. 9, E. xv. et Crewe et Rawl. C. 160.

right line descending or in a transverse line; so however that the right line always excludes the transverse line, and as may be manifestly concluded from the premises. Likewise, if the inheritance descends to the first-born not having an heir from himself, his after-born brothers or his sisters begin to be his near heirs, and they cease to be the heirs of the common father or other ancestor. But, nevertheless, the first-born after him begins to be the nearer heir, because he is the senior. And it is generally true that he is the next heir in every case to whom the absolute right descends, whether he be the true heir or a representative of the heir or a substitute for the heir, as is a lord on account of the felony of his tenant, for no one can be nearer who has not the absolute right. And in the same way we must hold concerning remote heirs to infinity, as is explained concerning near heirs, concerning whom a more full statement will be made concerning successors.

f. 266.

12. Concerning this, which is said in the writ, "summon, &c. such persons who hold," &c.

It is said also in the writ, "Summon" &c. "such "person or persons who hold that land or rent." And hence it is to be seen whether they hold the whole as the ancestor held it or a part of it and not the whole, according as the ancestor held it whose seysine the heirs themselves claim. And it is to be known that the whole may be so in many ways, or the whole may be claimed under one whole, as if any one should claim a certain manor with its appurtenances or in another manner, or ten librates of land with its appurtenances, or one carucate of land with its appurtenances or in some other manner, and it does not matter whether he does this or very like it. And hence when a claimant ought to make a view for the jurors, it is incumbent that the jurors should see what and how much he has placed in his view, and whether the whole which the ancestor himself had and according to what he held or not, because he ought to claim the whole by the assise which his ancestor held and according to what he held

si aliquid inde alienatum fuerit post seysinam antecessoris, vel translatum, alioquin de jure debet cadere breve. Si autem petat hæres seysinam antecessoris sui versus unum per plures particulas, sive particulæ illæ sint diversi generis sive unius, quælibet particula per se habet suum totum per se, sive fuerint in uno loco sive in diversis, et si aliquam particularum istarum nō teneat tenens integrè, cadit breve quoad illud totum illius particulæ, & tenet quoad alias ꝑticulas integras, q̧ licet sit unica persona quæ petat, & unica quæ teneat, tamen diversæ erunt actiones & plures, licet consimiles, propter plures particulas, ac si esset si quis peteret unam rem divisam inter plures, plures erunt actiones, propter plures particulas, & plures personas. Si autem petat quis versus unum unam particulam per plures particulas numero, sicut unam carucatam ex pluribus, per plures virgatas, vel unam virgatam per plures acras, si totum non tenuit tenens, cadit breve. Item quod dictum est de parte dici poterit de toto, vel quia nunquam tenuit inde aliquid, vel si tenuit, rem ad alium transtulit, & ita desiit tenere; & quo casu, videndum erit quo tempore desiit tenere, & quando ad alium res translata fuerit, utrum viz. ante impetrationem brevis, vel post, quia si ante, tunc non erit tenens in dolo, & sic nec in culpa. Si autem post impetrationem diligentem & prosecutionem timens futuram litem & controversiam motam, ne cum ipso agatur, mutandi judicii causa rem ad alium transtulerit, nihilominùs pro possessore judicabitur, & non solum ille qui transtulit, sed ille ad quem transfertur pro

Britton, l. iii. ch. xii. §§ 1, 2.

or to except if any thing has been alienated after the seysine of the ancestor, or transferred, otherwise of right the writ ought to abate. But if the heir claims the seysine of his ancestor against one person for many parcels [of land], whether those parcels are of different kinds or of one kind, each parcel has by itself its own entirety by itself, whether they are in one place or in different places, and if the tenant does not hold any of those parcels entirely, the writ abates as regards the entirety of that parcel and holds good as regards the other entire parcels, because although it be a single person who claims, and a single person who holds, nevertheless there will be different and several actions, although alike, an account of the several parcels, as if it were the case that a person claimed one thing divided amongst several persons, there will be several actions on account of there being several parcels and several persons. But if a person claims against one person one parcel by several parcels in number, as one carucate out of several by several virgates or one virgate by several acres, if the tenant has not held the whole, the writ abates. Likewise what is said of a part may be said of the whole, either because he never held any thing thereof, or if he held it, he has transferred it to another, and so has ceased to hold it; and in which case it must be seen at what time he ceased to hold it, and when the thing was transferred to another, whether for instance before the suing out of the writ, or after it, because if before, then the tenant will not be guilty of fraud, and so not in fault. But if after a diligent suing out and prosecution [of the writ], fearing the future lawsuit and the controversy which has been raised, he has transferred the thing to another with the object of changing the judgment, that the action should not be maintained against himself, nevertheless he shall be adjudged the possessor, and not only he who has transferred, but he to whom it has been transferred, according to the pleasure of the claimant

voluntate ipsius petentis, unus scilicet eorum vel uterque. Si autem petens negligens fuerit vel in impetratione vel in prosecutione, hoc erit ei imputandum, de negligentia vero vic. non erit ita quoad sumonitionem & officium vic. Si autem sit dominus capitalis qui teneat, licet totam rem non teneat, sed aliquam partem, procedet assisa contra ipsum, pro ea parte quam tenet: ut de itinere M. de P. in com̃ Warr̃ anno regis H. 5. Et quòd assisa cadere debeat ratione plus petitionis, ubi petens plus petierit quàm tenens tenuerit: habetis in itinere W. de Ralegh. in com̃ Leyc. de Humfredo de Leyc. & Juliana uxore ejus, circa finem rotuli. Item esto quòd tenens dicat, q totum tenementum non teneat & juratores quæsiti nesciant utrum teneat vel non, cadit assisa propter incertitudinem, ut de ultimo itinere W. de Ralegh. in com̃ North. de Wilhelmo de Camera.

f. 266 b.

Cap. X.

1. De responsione tenentis ad articulos brevis.

Proposita igitur intentione petentis, & fundata sic super quolibet articulo brevis ut prædictum est: oportebit tenentem, cùm warantum non habuerit nec defensorē, ad singulos articulos respondere p ordinem, & excipere contra omnes vel quosdam, quare actio vel assisa procedere non debeat, et docere contrarium vel diversum, & ad exceptionem suam defendendam vel probandā ponere se super assisam, & probare per assisam in modum assisæ, cùm nihil valeat excipere, nisi probetur exceptio in modum assisæ vel juratæ. Ad primum igitur articulum sic erit respondendum.

himself, one, to wit, of them or both [shall be so adjudged]. But if the claimant has been negligent either in the suing out of the writ or in the prosecution of the suit, this will have to be imputed to himself, but concerning the negligence of the viscount it will not be so, as regards the issuing of the summons and the duty of the viscount. But if it be a chief lord who holds, although he does not hold the entire thing, but some part, the assise shall proceed against him for that part which he holds, as in the iter of Martin de Pateshull in the county of Warwick in the fifth year of king Henry. And that the assise ought to abate by reason of too large a claim, where the claimant claims more than the tenant held, you have in the iter of William de Ralegh in the county of Leicester concerning Humfrey de Leycester and Juliana his wife near the end of the Roll. Likewise let it be that the tenant says, that he does not hold the entire tenement, and the jurors when asked know not whether he holds it or not, the assise abates from uncertainty, as in the last iter of William de Ralegh in the county of Northampton concerning William de Camera.

f. 266 b.

Chapter X.

1. Concerning the answer of the tenant to the articles of the writ.

The declaration of the claimant having been propounded and founded on each article of the writ as aforesaid, it will be incumbent on the tenant when he has no warrantor nor defender, to answer to each article in order, and to except against all or some, wherefore the action or assise should not proceed, and to show the contrary or something diverse, and to put himself on an assise to defend or prove his exception, and to prove by an assise in the manner of an assise, since it is of no value to except, unless the exception be proved in the manner of an assise or a jury. To the first article therefore it will have to be answered thus:

2. Ad hoc quod dicitur in brevi, si talis antecessor, &c., et quod non jaceat exceptio.

Britton, l. iii. ch. xii. §§ 1, 2.

Dicitur enim, si talis antecessor fuit seysitus, sicut pater vel mater & sic deinceps, quòd inter petentem & tenentem non poterit assisa procedere: quia tenementum, de quo assisa arramata est, descendit à prædicto antecessore quasi de communi stipite ad prædictum tenentem, & ita q assisa non jacet inter eos sicut inter convictas[1] personas, cùm tantundem juris habeat tenens in terra sive in tenemento petito, quantum & ipse qui petit, & ideò propter paritatem juris non poterit assisa terminare seysinam, quia si tenens petat, responderi poterit q tantundem juris habet tenens in tenemento petito, quantum & petens, & ideò, q alia actione opus erit scilicet per breve de recto, quod utrumq terminat, possessionem scilicet & proprietatem, & q ideò remanere debeat assisa. Ad quam quidem exceptionem, poterit petens sic respondere replicando, q nihil juris clamat per descensum de communi stipite, immò per feoffamentum factum à comūni antecessore et hoc paratus sit probare p testes, & chartas vel instrumēta, secundùm q magis sibi videt expedire, & super feoffamento erit pcedendum, secundùm q inferiùs pleniùs dicetur ad convincendum dictum replicantis. Triplicari autem poterit super replicationē, quòd donatio illa nulla esse debet, quia talis antecessor, qui dedisse debuit, semper fuit in seysina, & nunquam exivit à seysina nec statum mutavit in aliquo, quin ipse in seysina remansisset per se vel per suos nomine suo. Et tenens doceat contrarium si possit vel diversum. Infrà de hac materia pleniùs. Item si soror contra sororem vel particeps contra participem: quia locum habet breve de rationabili portione, quia quilibet est hæres propinquior propter jus quod communiter descendit omnibus, sicut uni, propter unitatem

Britton, ib. § 4.

f. 267.

[1] "inter convinctas," MS. Rawl. C. 160.

2. To this which is said in the writ, "if such an ancestor," &c., and that no exception lies to this.

For it is said, if such an ancestor was seysed, as a father or mother and so on in succession, that an assise cannot proceed between the claimant and the tenant, because the tenement concerning which the assise has been instituted descends from the aforesaid ancestor, as it were from a common stock, to the aforesaid tenant, and so that an assise does not lie between them as between persons privies in blood, since the tenant has as much right in the land or in the tenement claimed as the person himself who claims, and therefore on accout of the parity of right an assise cannot terminate the seysine, because if the tenant claimed, it might be answered that the tenant has as much right in the tenement claimed, as the claimant, and therefore that there will be need of another action, to wit, by a writ of right, which determines both, to wit, the possession and the property, and that therefore the assise ought to be stayed. To which exception the claimant may answer thus in replication, that he claims no right by descent from a common stock, but by a feoffment made by a common ancestor, and this he is prepared to prove through witnesses and charters or instruments, according as may seem to himself more expedient, and he must proceed upon the feoffment, according to what will be stated more fully to refute the assertion of the replicant. But the tenant may triplicate on the replication, that the donation ought to be null, because the said ancestor, who must have given it, was always in seysine, and never went out of seysine, nor changed his state in any respect, but himself remained in seysine by himself or by his agents in his name. And let the tenant prove the contrary if he can, or something diverse. Below on this matter [it will be explained] more fully. Likewise if a sister against a sister or a parcener against a parcener, because a writ "for a reasonable portion" applies, because each is a next heir in virtue of the right which descends in common to all, as to one, on account of the unity of

f. 267.

juris. Et propinquior esse potest valde remotus quoad jus, licet non quoad seysinā, si non appareat alius propinquior, licet bastardus, quia filius esse non potest nec hæres.

Cap. XI.

1. Si talis antecessor, cui competit assisa mortis antecessoris.

Dicitur autem supra de morte quorum competat assisa. Nunc autem dicendum quibus personis, quia dicitur, talis antecessor talis: quia ex hoc possunt competere exceptiones tenenti & responsiones. Et sciendum q assisa competit filio vel filiæ vel filiabus si plures nascātur, de morte patris, vel matris, sed non competit nepotibus neq, neptibus ex eis de morte prædictorū, avi vel aviæ, s. nisi aliis psonis jungantur, in quibus tenet assisa ut supradictū est. Item competit fratri de morte fratris. Item sorori de morte fratris vel sororis. Item nepoti vel nepti de morte avunculi vel amitæ, sed non e converso, & ita restringitur assisa ista infrà certos gradus & certas psonas, & ulteriùs non extenditur. Item locum habet ista assisa inter prædictas psonas et extraneas psonas quatenus se extendit, sed ubi assisa locum non habet ultra certos gradus, locum habebit inter easdem psonas consanguinitas, ascendendo usq, ad triavum et descendendo usq, ad trinepotem, quia inter quascunq, psonas locum habebit assisa infrà suos limites: inter easdem locum habebit cōsanguinitas extra. Et vice versa inter quascunq, psonas infrà suos limites locū non habet assisa, inter eosdem extra nunquam locum habebit consanguinitas, sed breve de recto tantùm, sicut inter psonas

right. And the next heir may be very remote as regards his right, but not as regards his seysine, if there does not appear another nearer heir, although a bastard, because he cannot be a son nor an heir.

CHAPTER XI.

1. "If such an ancestor," who is entitled to an assise of the death of an ancestor?

But it has been stated above, concerning the death of what persons an assise holds good. Now then we must discuss what persons are entitled since it is said "such an "ancestor of such a person," because upon this the tenant may be entitled to exceptions and to answers. And it is to be known that a son or a daughter or daughters, if there are more than one, are entitled to an assise concerning the death of their father or their mother, but neither grandsons nor granddaughters are entitled concerning the death of the aforesaid persons, namely a grandfather or a grandmother, unless they are joined with other persons, in whom an assise holds good as aforesaid. Likewise a brother is entitled concerning the death of a brother. Likewise a sister concerning the death of a sister. Likewise a grandson or a granddaughter concerning the death of an uncle or an aunt, but not conversely, and so the assise is restrained within certain degrees and certain persons, and is not extended further. Likewise that assise has a place between the aforesaid persons and extraneous persons as far as it extends, but where the assise has no place beyond certain grades, a writ of cosinage has a place between the same persons, by ascending up as far as the grandfather's grandfather, and in descending to the grandson's grandson, for between whatsoever persons an assise has place within its own limits, between the same persons a writ of cosinage will have place outside them. And conversely between whatsoever persons within its own limits an assise has no place, between the same persons a writ of cosinage will never have a place, but a writ of right only, as between the persons above

prænotatas: & secundùm q̧ inferiùs dicetur. Talibus igitur ꝑsonis de morte talium competit assisa (ut prædictum est) contra extraneas ꝑsonas: ut si dn̄s capitalis in seysina ꝑpria fuerit, vel alia quævis extranea ꝑsona, sive fuerint fratres uterini de alio patre, vel alia matre, à quibus hæreditas nō descendit, quia tales sunt quasi extranei, cùm nō sunt capaces hæreditatis. Item eodem modo & multò fortiùs dici possunt extranei illegitimi et bastardi, quia licet sint uterini, tamen inter tales (secundùm quosdam) non jacet assisa cùm sint bastardi, nec ad hoc saltem q̧ ꝑ assisam ꝑcedi possit ad ꝑbandam legitimitatem, quia ꝑ hoc terminari non poterit negotium: quia si talis cohæres se ꝑbaverit legitimum, non tamen ꝑpter hoc se ꝑbat hæredem ꝑpinquiorem, licet se ꝑbaverit heredem. Quia si talis in causa bastardiæ se ꝑbare possit legitimum, tunc ulteriùs locū non habebit assisa, sed ad breve de recto erit recurrendum, ne sub specie possessionis terminetur ꝑprietas & jus merum, q̧ esse non debet. Sed si bastardia contra tales ꝑsonas nominatas objiciatur a ꝑsonis extraneis, tunc in causa bastardiæ ꝑcedatur sicut inter alias quascunq; ꝑsonas. Item cùm inter easdem ꝑsonas prænominatas non habeat locum aliud breve q̧ de recto, non erit ibi duellum neq; magna assisa, sed ꝑ narrationem descensus à com̄uni stipite terminabitur tam jus possessorium q̧ jus merum, quia facta computatione de facili ꝑpendi poterit, quis primogenitus et hæres ꝑpinquior et heres justior, tum ꝑpter jus & ætatem, tum ꝑpter sexum & consimilem ꝑpinquitatem, tū ꝑpter lineam rectam & transversalem. Si autem nepos priùs fuerit in seysina recta linea descendendo, exclu-

f. 267 b.

noted, and according to what will be said below. Such persons therefore are entitled to an assise concerning the death of such persons (as aforesaid) against extraneous persons, as if a chief lord has been in his own seysine, or any other extraneous person, or if there have been uterine brothers from different fathers, or brothers from a different mother, from whom the inheritance does not descend, because such persons are as it were extraneous persons, since they are not capable of inheriting. Likewise in the same way and in a much more forcible manner illegitimate children and bastards may be termed extraneous, because although they may be uterine, nevertheless between them (according to some) no assise lies since they are bastards, nor for this purpose at least that proceedings may be had through an assise to prove their legitimacy, because the business cannot be determined by this means, since if such a coheir has proved himself to be legitimate, he does not thereby prove himself to be the next heir, although he has proved himself to be an heir. Because if such a person in a cause of bastardy can prove himself to be legitimate, then the assise will not further apply, but recourse must be had to a writ of right, lest under the form of possession the property and the absolute right should be determined, which ought not to be. But if bastardy be objected by extraneous parties against such persons by name, then let proceedings be had in a cause of bastardy as between any other persons whatsoever. Likewise since between the above-named persons no other writ but one of right has place, there will be no duel nor great assise, but by the narration of the descent from a common stock as well the possessory right as the absolute right will be determined, because by making a computation it can easily be ascertained, who is the first born and the next heir and the more rightful heir on the score of right and age, as well as on account of sex and similar propinquity, as well as on account of the right line and the transverse line. But if a grandson has been

f. 267 b.

dit omninò avunculum à successione si petat versus nepotem p assisam, quia non jacet. Si autem p breve de recto, excludit eum omninò tum ratione juris q ei descendit & non avunculo, tum ratione rectæ lineæ, quia omninò excludit transversalem dum aliquis reperiatur in ea, masculus vel fœmina, qui erunt ppinquiores ratione prædicta, & non solū excludit nepos vel neptis avunculum et alios remotiores ex linea transversali venientes, cùm nepos vel neptis fuerint in possessione: verùm etiam excludunt eorundem pnepotes & pneptes & omnes alios ex illis descendentes. Cùm autem avunculus priùs fuerit in possessione hæreditatis p intrusionem vel alio modo, et nepos petat versus eum de seysina patris, vel descensu avi, locum non habebit assisa, sed tantum breve de recto, p q si compertum fuerit p narrationem q nepos hæres fuerit ppinquior et justior ppter juris prærogativam, tamen nihil capiat p judicium ppter casum regis,[1] qui hucusq se habuit in contrarium, & remanebit semper judicium in suspenso, donec contentio (si partes voluerint) p concordiam terminetur. Et unde videndum, si nepos & avunculus sub eadem potestate antecessoris simul fuerint astrarii tēpore mortis, eo q ambo reperiuntur in atrio sive in astro, et quo casu cùm videatur q uterq habeat liberum tenementum, statim cùm quilibet eorum sit rectus hæres et ppinquus: tamen ille præferri debet qui secum habet juris & pprietatis prærogativam & rectæ lineæ quæ excludit transversalem, s. nepos, quia in psona ejus conjungitur jus & pprietas cum seysina, q quidem non est in psona avunculi, qui non

Infra, f. 327 b. Glanville, vii. 3.

[1] "casum regis." The reference here is to the case between king John and his nephew, Arthur of Brittany, the son of his elder brother Godfrey. See below, f. 327 b., and the Introduction.

first in seysine, by his descent in a right line he excludes altogether his uncle from the succession if he claims against the grandson by an assise, which does not lie. But if by a writ of right, he excludes him altogether as well by reason of the right which descends to him and not to his uncle, as by reason of the right line, because it excludes altogether the transverse line, as long as any one is found in it, male or female, who will be nearer heirs for the reason aforesaid, and the grandson or granddaughter not only excludes the uncle and others more remote on the transverse line, when the grandson or granddaughter have been in possession, but they also exclude the great-grandsons and great-granddaughters of the same and all others descending from them. But when an uncle has been previously in possession of the inheritance by intrusion or in any other manner, and the grandson claims against him upon the seysine of his father or upon his descent from the grandfather, an assise shall not apply, but only a writ of right, whereby if it be found through the narration that the grandson is the nearer and more rightful on account of the prerogative of right, nevertheless he will take nothing on account of the case of the King, which has hitherto ruled to the contrary, and the judgment will always remain in suspense until the contention (if they have been willing) is terminated by an accord. And hence we must see, if the grandson and the uncle under the same power of the ancestor have been domiciled together at the time of his death, inasmuch as both are found in his hall and on his hearthside, and in which case, since it seems that both have a free tenement, forthwith as each is a rightful and near heir, nevertheless he ought to be preferred who has with him the prerogative of right and of property and of the right line, which excludes the transverse line, to wit, the grandson, because in his person are conjoined the right and the property with the seysine, which is not in the person of the uncle, who has not anything beyond those

habet nisi tantum ea, quæ sunt possessionis & non juris. Et unde, si ꝑ nepotem ejiciatur, non recuperabit ꝑ assisam novæ disseysinæ, tum ꝓpter juris prærogativam in nepote, tum quia vacuam seysinam non habuerit. Si autem avunculus ejecerit nepotem, nepos ꝑ assisam recuperabit. Et illud idem erit, si nepos in seysina extiterit tempore mortis, & avunculus cum extra fuerit nepotem ejecerit, & vice versa si avunculus in seysina & nepos extra & avunculum ejecerit, avunculus ꝑ assisam recuperabit, si diu in pacifica seysina extiterit & alias non, ut infrà, salvo tamen nepoti jure suo super ꝓprietate. Si autem ambo fuerint extra tempore mortis antecessoris, et sic neuter astrarius, & tunc aut possessio vacua, aut capitalis dominus, rex, vel alius extitit in possessione. Si autem vacua, tunc refert quis eorū se priùs posuerit in seysinam. Si autem nepos, statim habet liberum tenementum ratione prædicta, & si fuerit ejectus per avunculum, recuperabit ꝑ assisam. Si autem avunculus se priùs posuerit in seysinam, & ꝑ nepotem statim ejectus & recenter, ꝑ assisam novæ disseysinæ non recuperabit versus nepotem, licet versus alios. Sed si tempus habuerit ꝑ negligentiam nepotis vel impotentiā, cùm seysina sua substantiam capiat ex tempore, si per nepotem fuerit eject⁹, ꝑ assisam recuperabit, quia sine judicio ejicitur licet justè. Si autem seysina vacua non fuerit, cùm capitalis dominus extiterit in seysina, sine voluntate ipsius se ponat in assisam. Refert igitur quis eorum priùs autoritate dñi capitalis fuerit in seysina. Si autem nepos, avunculus nunquam recuperabit versus

Supra, f. 64 b.

f. 268.

things, which are signs of possession and not of right. And hence if he be ejected by a grandson, he shall not recover by an assise of novel disseysine, as well on account of the prerogative of right in the grandson, as because he had not a vacant seysine. But if the uncle has ejected the grandson, the grandson shall recover by an assise. And the same thing shall take place if the grandson has been in seysine at the time of the death, and the uncle who was outside has ejected the grandson, and conversely, if the uncle was in seysine and the grandson outside, and he has ejected the uncle, the uncle shall recover by an assise, if he has been for a long time in peaceable seysine, and otherwise not, as below, saving always to the grandson his right upon the property. But if both have been outside at the time of the death of the ancestor, and so neither of them is there in domicile, then either the possession has become vacant, or the chief lord, the king or some one else has been in possession of it. But if it has been vacant, then it is of importance who of them has put himself first into seysine. But if the grandson, he has forthwith a freehold on the ground above stated, and if he be ejected by the uncle, he shall recover by an assise. But if the uncle has put himself first into seysine, and has been forthwith and recently ejected by the grandson, he shall not recover against the grandson by an assise of novel disseysine, although he may against others. But if he has had time through the negligence of his grandson or his powerlessness, when his seysine has acquired substance from time, if he has been ejected by the grandson, he shall recover by an assise, because he has been ejected without a judgment although rightfully. But if the seysine has not been vacant when the chief lord was in seysine, let him put himself on an assise without waiting his pleasure. It is of importance therefore who of them was first in seysine by the authority of the chief lord. f. 268. But if the grandson, the uncle will never recover against

eum propter privilegium juris q nepos habet, si autem avunculus, nepos non recuperabit p assisam mortis antecessoris, propter paritatem juris possessorii q avunculus habet, nisi sibi statim perquisiverit p assisam, vel alio modo quòd seysinam avunculi fecerit contentiosam. Non habebit igitur remedium nepos nisi p breve de recto, & sic remanebit avuncul9 semper in seysina, quia judicium remanebit in suspenso propter casum regis super jure. De possessione autem & jure possessorio (ut prædictum est) semper habet avuncul9 paritatem. Si autem capitalis dominus neutrum illorum admiserit, donec ei cōstiterit quis eorum sit hæres justior, si uterq, petat versus eum per assisam, nepos præferri debet propter juris meri prærogativam, licet in utriusq, persona locum habeat assisa. Item cùm neuter ipsorum astrarius fuerit, & dominus capitalis diu tenementum in manu sua tenuerit, & illud postmodum avunculo p finem quem cum eo fecerit restituerit, cùm p hoc non sit avunculus astrarius nec in seysina nisi p factum aliorum, tunc videtur q omisso brevi de recto ppter casum regis, in psona nepotis locū habere posset breve de ingressu, cùm sit extra seysinā. Cùm autem in seysina, non poterit ei prodesse aliud breve quàm breve de nova disseysina, ppter suspentionem judicii. Item extraneus dici poterit quoad assisam mortis antecessoris, licet procreatus sit de eadem matre à qua descendit hæreditas, sive masculus sive fœmina, ppter coarctationem hæredum. Ut si terra data fuerit in maritagium tali cum tali uxore sua & hæredibus ipsorum conjunctim, omnes alii sunt extranei, & sic excludit fœmina masculum sicut jus sanguinis.

him on account of the privilege of right which the grandson has, but if the uncle, the grandson will not recover by an assise of mortdancester, because of the parity of possessory right which the uncle has, unless he has forthwith pursued it by an assise, or in some other way so that he has made the possession of the uncle a subject of contest. The grandson will therefore not have a remedy except by a writ of right, and so the uncle will always remain in seysine, because the judgment will always remain in suspense on the right on account of the case of the king. But as regards possession and possessory right (as aforesaid) the uncle always has parity. But if the chief lord has admitted neither, until it has been made clear to him who of them is the more rightful heir, if each claims against him by an assise, the grandson ought to be preferred on account of the prerogative of abstract right, although the person of each is entitled to an assise. Likewise where neither of them has his domicile therein and the chief lord has kept the tenement for a long time in his own hand, and has afterwards restored it to the uncle by a fine, which he has made with him, since thereby the uncle is not therein domiciled nor in seysine except by the agency of others, then it seems that the writ of right having been omitted on account of the case of the king, a writ of entry may have place in the person of the nephew, since he is out of seysine. But if he be in seysine no other writ can profit him but a writ of novel disseysine, on account of the suspension of the judgment. Likewise he may be termed an extraneous person as regards an assise of mortdancester, although he be procreated from the same mother from whom the inheritance descends, whether he be male or female, on account of the limitation of heirs. As if the land has been given as a marriage portion to such a person with so-and-so his wife and to their heirs conjointly, all others are extraneous persons, and so the female excludes the male just as the right of blood.

Cap. XII.

1. De exceptionibus contra articulos brevis.

Redeamus ad exceptiones ꝑponendas contra articulos brevis. Dicitur enim à petente q̧ talis antecessor fuit seysitus, ad quod poterit tenens excipere & docere contrarium vel diversum. Dicere enim poterit q̧ nunquā fuit inde in seysina aliquo tempore, & inde se ponere super assisam, & petens q̧ sit ut priùs, & simili modo se ponere super assisam, & sic procedat assisa, vel dicere possit tenēs q̧ si antecessor unquā fuit in seysina, hoc fuit nomine alieno ut ꝑcurator, custos, vel curator: vel sic, si in seysina fuit, liberū teñtum habere non potuit, quia non tenuit teñtum illud nisi ad terminum annorum sicut fructuarius, vel in vadium ut creditor. Item si dicatur q̧ seysinam habuit ex donatione, excipi possit à tenente q̧ antecessor nunquam seysinam habuit per se nisi simul cū donatore. Et cùm multæ possunt esse exceptiones de hac materia, istæ tamen sufficiant ad presens exempli causa. Item dicere poterit tenens excipiendo q̧ si talis antecessor seysinam habuit, nullum habuit in dominico nisi ad terminū ut firmarius, vel in vadiū ut creditor, vel hujusmodi, et alius habuit inde liberū teñtum. Item dicere poterit q̧ si talis antecessor liberum tenementum habuerit in dominico, illud non habuit in feodo q̧ aliquid ei descendere potuit ut heredi, quia non nisi ad terminum vitæ quacunq̧ ratione. Item si concedat tenens q̧ in feodo, dicere poterit excipiendo q̧ nihil potuit descendere tenēti per assisam ex tali tenemento, quia tenemētum illud datum fuit antecessori præfato & certis hæredibus suis et coarctatis, ut si tenementum datum fuerit tali antecessori et in maritagium et heredibus suis de corpore suo exeuntibus,

Britton, l. iii. ch. xiii. § 1.

f. 268 b.

Chapter XII.

1. Of exceptions against the articles of the writ.

Let us return to the exceptions against the articles of the writ. For it is said by the claimant that such an ancestor was seysed, to which the tenant may except and say the contrary or something diverse. For he may say that he was never in seysine thereof at any time, and thereon may put himself on an assise, and the claimant that he may be as before, and in a similar manner may put himself upon an assise, and so an assise may proceed, or the tenant may say that, if his ancestor was ever in seysine, this was in somebody else's name, as a procurator, or a guardian, or a curator; or thus, if he was in seysine he could not have the freehold, because he held the tenement only for a term of years, as the fructuary, or for a pledge as a creditor. Likewise if it be said that he had the seysine from a donation, it may be excepted by the tenant, that the ancestor never had the seysine by himself but only with the donor. And since there may be many exceptions on this matter, these nevertheless may suffice by way of example. Likewise the tenant may say in excepting that, if such an ancestor had the seysine, he had no tenement in demesne except for a term as a lessee, or for a pledge as a creditor, or in like manner, and another person had the freehold thereof. Likewise he may say that, if such an ancestor had a free tenement in demesne, he had it not in fee so that anything could descend to him as heir, for he had it only for the term of his life on whatever grounds. Likewise if the tenant admits that he may have had it in fee, he may say by way of exception that nothing could descend to such a tenant by an assise from such a tenement, because that tenement was given to the aforesaid ancestor and to certain of his heirs and those limited, so that if the tenement was given to such an ancestor as a marriage portion and to the heirs procreated out of his body, or to such a person with so-and-

f. 268 b.

vel tali cum tali uxore sua et eorum heredibus com̄unibus & non separatis. Et idem dici poterit de eo et hæredib9 suis qui feoffatus fuerit p conditionem & per modum, ubi coarctantur heredes. Item respondere poterit tenens & cōcedere q talis antecessor obiit seysitus ut de feodo et in dominico, sed tamen p conditionem et modum suspēsa est talis hæredis successio quoad seysinam usq; ad tempus incertum, s. ad vitam vel usque ad certum tempus, s. ad terminum annorum, vel ad certum tempus sub conditione, s. donec conditio extiterit vel non extiterit, quam quidem exceptionem oportet tenentem probare per assisam in modum juratæ. Antecessor quidem ille teñtum illud pignori supposuit creditori ad certū diem, sub tali conditione, q nisi pecunia tali die solveretur q tenementum illud remaneret creditori in feodo. Et unde videndum, utrum dies solutionis præterierit vel nondum advenerit. Et si præterierit, tunc videndum erit utrū solutio facta fuerit vivente debitore vel post mortem vel non. Si autem facta fuit solutio vel pecunia oblata suo die sub bonorum virorum testimonio, procedet assisa in modum juratæ de solutione facta, & recuperabit hæres per juratam. Si autem soluta non fuerit nec oblata, tunc cadit assisa, & remanebit tenementum creditori, quia non est satisfactum conditioni. Si autem dies nondum præterierit, tunc suspenditur assisa usq; ad diem, et secundùm quod solutio facta fuerit ad diem suum vel non, procedat assisa in crastino vel remanebit. Item remanere poterit assisa propter conditionem & propter modum traditionis, licet antecessor obiit seysitus ut de feodo, verbi gratia: Quidam A. tradidit quandam terram B. in vadium, quousq; idem A. red-

so his wife and their common heirs and not their separate heirs. And the same may be said concerning him and his heirs who has been enfeoffed under a condition and under a mode, where the heirs are limited. Likewise the tenant may answer and admit that such an ancestor died seysed as of the fee and in the demesne, but nevertheless through a condition and a mode the succession of such an heir is suspended as regards the seysine down to an uncertain time, to wit, for his life, or down to a certain time, to wit, for a term of years, or down to a certain time under a condition, that is until a conditional event has happened or has not happened, which exception indeed the tenant must prove by an assise in the manner of a jury. The ancestor indeed has subjected that tenement as a pledge to a creditor down to a certain day, under such a condition that unless the money was paid on a certain day the tenement should remain with the creditor in fee. And hence it is to be seen, whether the day of payment has passed or has not yet come. And if it has passed, then it is to be seen whether the payment has been made whilst the debtor was alive or after his death or not at all. But if the payment has been made or the money offered on the proper day upon the testimony of honest men, the assise shall proceed in the manner of a jury concerning the payment having been made, and the heir shall recover by a jury. But if it has not been paid nor offered, then the assise falls and the tenement remains with the creditor, because the condition has not been satisfied. But if the day has not yet passed, then the assise is suspended down to the day, and according as the payment has been made on the proper day or not, let the assise proceed on the next day or it shall be stayed. Likewise an assise may be stayed on account of a condition and on account of a mode of delivery, although the ancestor has died seysed as of fee, by way of example: A certain A. delivered a certain land to B. in pledge until the said

deret eidem B. centum marcas cum tali conditione adjecta, q nisi idem A. redderet eidem B. illas centum q terra remaneret prædicto B. nulla facta mentione de hæredibus ipsius A. Moritur A. pecuniâ non solutâ, hæredes ipsius A. petunt per assisam, creditor objicit conventionem. Et quia prædictus A. non solvit in vita sua et obligatio personalis fuit, nec extenditur ad hæredes licet parati sint solvere, remanebit terra creditori et hæredibus suis. Idem erit, si obligatio personalis fuerit quantum ad creditorem cum nulla mentione facta de hæredibus creditoris. Item poterit tenementum dari ad firmam creditori sub tali conditione, & ad terminum annorum, quòd si contingat debitorem mori infrà terminum, quòd tenementum remaneat creditori in feodo vel ad vitam, & tenebit conventio. Item vice versa, si teñtum detur in feodo vel ad vitam, et sic convenerit quòd si creditor moriatur infrà certum terminum, & quòd id quod fuit in feodo vel ad vitam remaneat ad terminum vel in feodo alicui alteri, bene tenet conventio. Et si prima facie debitor moriatur vel creditor vel uterque, locum habeat assisa mortis antecessoris, quia debitor quodammodo moritur seysitus ut de feodo. Tamen eliditur assisa per exceptionem conventionis, ut si hæres debitoris pro se habeat assisam in modum assisæ & seysina ei concessa, creditor vel ejus hæredes habebunt contra assisam exceptionem conventionis in modum juratæ, in quā quidē si petens per assisam se ponere voluerit, denegabiī ei actio & assisa, & si tenens exceptionem conventionis à se propositam per juratam vel alio modo probare voluerit, sic seysinam amittit quia indefensus remanebit. Si autem creditor in primo casu ante diem

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A. should render to the said B. a hundred marks with this condition added, that unless the said A. rendered to the said B. those hundred marks the land should remain with the aforesaid B., no mention having been made of the heirs of A. A. dies without the money having been paid, the heirs of A. claim by an assise, the creditor raises the agreement as an objection. And because the aforesaid A. has not paid in his lifetime and the obligation was personal and is not extended to the heirs, although they are prepared to pay, the land shall remain with the creditor and his heirs. The same result will happen, if the obligation has been personal as far as regards the creditor with no mention made of the heirs of the creditor. Likewise the tenement may be granted upon a lease to a creditor under such a condition and for a term of years, that, if the debtor happens to die within the term, the tenement shall remain with the creditor in fee and for life, and the agreement shall be binding. Likewise conversely, if the tenement be granted in fee or for life and it has been agreed thus that, if the creditor dies within a certain term, that which was in fee or for life shall remain for the term or in fee to some one else, the agreement holds good. And if at first sight the debtor dies or the creditor or both, an assise of mortdancester has a place, because the debtor dies in a certain sense seysed as of fee. Nevertheless the assise is parried by an exception of the agreement, as if the heir of the debtor has on his own behalf an assise in manner of an assise and the seysine is conceded to him, the creditor or his heirs shall have against the assise an exception of the agreement in the manner of a jury, upon which indeed if the claimant by the assise is willing to put himself, an action and an assise shall be refused to him, and if the tenant has desired to prove the exception of an agreement as propounded by him by a jury or in any other manner, he so loses the seysine, because he will remain undefended. But if the creditor

f. 269.

solutionis moriatur, vel debitor, vel uterq;, remanebit assisa in suspenso usq; ad diem solutionis, quo elapso aut procedet assisa secundùm quod solutio facta fuerit vel non, aut remanebit assisa per exceptionem conventionis elisa. Item si sic detur tenementum ad firmam & ad terminum sub tali conditione, q̧ si infrà terminum illum contingat debitorem mori, q̧ remaneat tenementum creditori ad vitam vel in feodo, vel vice versa, si contingat creditorem mori infrà certum terminum, id q̧ datum fuit in feodo remaneat hæredi creditoris ad vitam, vel id q̧ datum fuit creditori ad vitam, remaneat ei vel hæredi suo ad terminum, bene valebit conditio, non obstante assisa, opposita exceptione conventionis, & probata ut supra. Item excipi poterit, quòd licet talis obiit seysitus ut de feodo, tamen nihil potuit descendere ad hæredem, quia bastardus fuit, & in quo casu non est loquela mittenda ad curiam Christianitatis de bastardia convincenda, quia de eo qui mortuus est convinci non potest ad bastardum, quia respondere non potest, nec excipere, licet tamen an talis fuerit inquiri poterit per assisam an talis fuit vel non in modum juratæ captam, si utraq; pars consenserit in juratam, quod siquidem non, fiat ut supra de eo qui remaneat indefensus. Eodem modo dici poterit de bastardo, qui feoffatus est tenendum sibi & hæredibus suis, si absque hærede moriatur. Item responderi poterit quòd non in feodo sed ut de vadio vel custodia &c. ut supra. Item quòd non in feodo sed de vadio, sed de ballio, sed de traditione, sed ad voluntatem concedentis.

2. Dicitur "de tanta

Item redeamus ad articulos brevis, scilicet ubi dicitur (de tanta terra cum pertinentiis in tali villa) ut

in the first case dies before the day of payment, or the debtor, or both, the assise will remain suspended down to the day of payment, upon the lapse of which either an assise shall proceed according as the payment has been made or not, or the assise shall be stayed parried by an exception of the agreement. Likewise if a tenement be thus granted on a lease and for a term on such a condition, that if it should happen that the debtor dies within that term, then the tenement shall remain to the creditor during his life or in fee, or conversely, if it should happen that the creditor dies within a certain term, that which was granted to him in fee shall remain to the heir of the creditor for his life, or that which was granted to a creditor for his life, shall remain to him or his heir for a term, the condition will be a valid one, notwithstanding the assise, an exception of the agreement having been objected and proved as above. Likewise it may be excepted, that although such a person died seysed as of fee, nevertheless nothing could descend to his heir, because he was a bastard, and in which case a cause is not to be sent to the Court of Christianity to prove the bastardy, because proof may not be made concerning a dead man that he was a bastard, since he cannot answer nor take exception, although it may be inquired whether he was such by an assise "whether he was such or not" held in the manner of a jury, if each party consents to a jury, which if not, let it be done as above stated concerning him who remains undefended. In the same manner it may be said of a bastard who has been enfeoffed to hold to himself and his heirs, if he dies without an heir. Likewise it may be answered that it is not held as of fee, but as in pledge or guardianship, &c., as above. Likewise that it is held not of fee, but in pledge, but in bail, but in deposit, but at the pleasure of the grantor.

2. It is said "of so

Likewise let us return to the articles of the writ where it is said, "of so much land with its appurtenances in such

terra," ut si error fuerit in impetratione, exceptio propter errorem.
Britton, ii. ch. xviii. § 1.

si error fuerit in tali impetratione, ut si quis posuerit in breve tenementum pro redditu vel e converso. Item si redditum pro servitiis & consuetudinibus. Item si fuerit error in quantitate tenementi, ut si quis posuerit duas carucatas, ubi antecessor non obiit seysitus nisi de una. Item si quis servitium petat sub nomine annui redditus, qui datur ꝑ homagio, cùm & servitium proveniens ex tenemento aliam habeat causam quàm annuus redditus qui datur feoffato. Item videat petens ꝗ plus non petat quàm teneat tenens, ꝗ si fecerit, cadit breve & differtur assisa propter plus petitionis. Si autem minùs petierit, aliud erit. Item videndum erit de possessione antecessoris, de quantitate, & qualitate, per quos terminos, & qua mensura, et utrum larga fuerit mensuratio tenementi dati antecessori, vel stricta, secundùm ꝗ petitur per carucatas, vel libratas, vel virgatas, vel numerum acrarum, vel pro quanto tenemento antecessor tenementum illud tenuit die quo obiit, secundùm quod tunc fuit mensuratum, vel strictè, vel largè, & secundùm ꝗ tunc fuit, licet ibi fuerit plus vel minus, quia si plus tūc fuit & tunc sic, non cadit breve propter largam mensurationem, nec eodem modo si minus propter strictam. Si autem non teneat tenens sicut tunc fuit, cadit breve propter defectum, sive tunc ibi plus fuerit sive minus, ut si primò fuit plus quàm una carucata per largam mensurationem, cadit breve si aliquid inde deficiat, licet ibi sit una carucata ꝑ strictam mensurationem. Nec sufficit si dicat petens ꝗ tenens teneat unam carucatam, nisi illam teneat sicut antecessor illam tenuit, strictam vel largam.

f. 269 b.

"a vill," so that if there has been an error in such a suing out of the writ, as if a person has inserted in the writ a tenement instead of a rent or the converse. Likewise if a rent instead of services or customs. Likewise if there has been an error in the quantity of the tenement, as if a person shall have stated two carucates, where the ancestor died seysed of not more than one. Likewise if a person claims a service under the name of an annual rent which is given in return for homage, when the service proceeding from the tenement has a different cause from that of an annual rent which is given to a feoffee. Likewise let the claimant see that he does not claim more than the tenant holds, which if he does, the writ falls, and the assise is put off because of an excess in the claim. But if he has claimed less, it is different. Likewise it is to be seen concerning the possession of an ancestor, concerning the quantity and the quality, by what boundaries, and by what measure, and whether the measurement of the tenement granted to the ancestor was large or strict, according to what is claimed by carucates, or by librates, or by virgates, or by the number of acres, or for what quantity he held that tenement on the day on which he died, according to what was then measured, whether strictly or largely, and according to what it was at that time although it may have been more or less, because if it was more then and such then, the writ does not fall on account of a large measurement, nor in the same way if less on account of a strict measurement. But if the tenant does not hold it now as it was then, the writ falls on account of the defect, whether there was there more or less at that time, as if at first there has been more than one carucate by large measurement, the writ falls if anything is deficient thereof, although there may be there one carucate by strict measurement. Nor is it sufficient if the claimant says that the tenant holds one carucate, unless he holds it as his ancestor held it, strict or large. Likewise what

much" land, so that if there be an error in the suing out of the writ, an exception lies against the error.

f. 269 b.

Item q dicitur de tenemento, dici debet de pertinentiis, q sicut antecessor tenementum illud tenuit cum pertinentiis & quas habuerit quando obiit, tales peti possunt, verbi gratia, si priùs ante mortem dedit advocationem, talis advocatio non debet nominari inter pertinentias quas habuit quando obiit. Et in hoc casu videndum erit, si tenens non teneat, q aliquando tenuit post mortem antecessoris, quando desiit possidere, utrū viz. ante impetrationē vel post, vel ante litem inceptam vel post, & ita q in mora non extiterit, excepto eo q si erga dominū capitalem petierit per assisam, sive totum tenuerit sive partem, ꝓcedet assisa quandocunq; desierit possidere, dum tamen alius in seysina sit per ipsum de hoc q desierit, de quo si dubitetur inquiri poterit per assisam, ut de itinere M. de Pateshul in comitatu Warr̄ anno regis H. 5. Item si tenuit, & dolo desiit possidere, mutandi judicii causa propter litem futuram, cùm impetratum sit vel inceptum, pro possessore habebitur, & tam iste quàm ille ad quem res translata fuerit simul vel eorum alter poterit conveniri pro voluntate petentis. Et ideò cùm per talem translationem post impetrationem non desinat possidere, nunquam mutare poterit causam possidendi, nec feodum sibi facere per tale feoffamentum, & semper erit ut custos. Et ideò si post tale feoffamentum obierit hærede suo infrà ætatem existente qui vocatus fuerit ad warantum, non expectabitur ætas, quia antecessor suus non mutavit causam possidendi per talem translationem. Sumi poterit exemplum de brevi de ingressu post disseysinam, ubi in vita dis-

Britton, iii. ch. xxi. § 3.

is said concerning the tenement, ought to be said concerning the appurtenances, that as the ancestor held that tenement with its appurtenances, and which he held on the day on which he died, such may be claimed, for instance, if prior to his death he gave away an advowson, such advowson ought not to be named amongst the appurtenances which he had when he died. And in this case it is to be seen, if the tenant does not hold, what he held at some time after the death of an ancestor, when he ceased to possess, whether, to wit, before he sued out a writ, or afterwards, or before the commencement of the suit or afterwards, and so that he has not been in delay, excepting in the case that if he has claimed against his chief lord by an assise, whether he has held the whole or a part, the assise shall proceed whenever he has ceased to possess, provided some one else be in seysine from the circumstance that he has ceased so to be, concerning which if it be doubted, inquiry may be made by an assise, as in the iter of Martin de Pateshull in the county of Warwick, in the fifth year of king Henry. Likewise if he held and through deceit has ceased to possess, for the sake of changing the judgment with a view to a future suit, when the writ has been sued out or the suit commenced, he shall be held to be the possessor, and as well himself as the person, to whom the thing has been transferred, may be convened together or either of them according to the pleasure of the claimant. And therefore since he does not cease to possess by such a transfer after the suing out of the writ, he can never change the cause of his possession, nor make it a fee for himself by such a feoffment, and he will always be as a guardian. And therefore if after such a feoffment he has died his heir being under age who has been called to warrant, his full age shall not be waited for, because his ancestor did not change the cause of possession by such a transfer. An example may be taken from a writ of entry after a disseysine, where in the lifetime of the person disseysed

seysiti assisa arramata est, & visus terræ fact⁹ est, vel sine clausulis illis non expectatur ætas hæredis disseysitoris, q quidem fieret, nisi assisa arramata esset, cùm posset. Et etiam quamvis assisa mortis antecessoris arramata non esset erga dominum capitalem, tamen si alienaverit, & maximè dum hæres fuerit infrà ætatem, & inde feoffaverit aliquē, & mortuo dño capitali, hæres domini capitalis vocetur ad warantum per chartam patris sui, ꝑpter hoc nō remāebit assisa capiēda, sed capiēda erit tali modo, q si petens recuperaverit salva sit tenenti warantia sua, cùm hæres dñi capitalis ad ætatem pervenerit, ut de ultimo itinere M. de Patesh. in comitatu Norff. anno regis H. decimo secundo, assisa mortis antecessoris si Eudo pater Walteri, de 36. acris terræ cum pertinentiis in Esterbergh, quam terram Ranulphus de Braham tenuit, qui vocavit inde ad warantum Rogerum le Bigot qui tunc fuit infrà ætatem, & per chartam H. Bigot com̃ Norff. patris ipsius Rogeri, & ubi ideò consideratum fuit quòd caperetur assisa, et si jurati dicerent q Eudo seysitus obiit ut de feodo & Walterus recuperasset seysinam suam, et quòd Ranulphus expectaret usq, ad ætatem Rogeri, et tunc haberet recuperare suum versus Rogerum de warantia. Item dicitur (in tali villa), ad q respōdeatur ut supra, de nova disseysina, si error in brevi inveniatur.

f. 270.

3. Item die quo obiit.

Item ad hoc q dicit (die quo obiit) excipi poterit & responderi, q licet antecessor aliqua hora diei esset in seysina, tamen non obiit seysitus, quia cùm mane, vel alia hora esset in seysina, eodem die dedit terram illam tali hora tertia, & obiit hora nona. Item longè

an assise has been instituted, and a view of the land made, the full age of the heir of the disseysor is not waited for even without those clauses, which would be done, unless the assise had been instituted, when it might be. And also although an assise of the death of an ancestor has not been instituted against the chief lord, nevertheless if he has alienated it and chiefly whilst the heir was under age, and has enfeoffed some one therewith, and the chief lord having died, the heir of the chief lord is called to warrant by the charter of his father, the holding of the assise shall not be stayed on that account, but it shall be held in such a manner, that, if the claimant shall recover, the tenant's right to his warranty, shall be reserved, when the heir of the chief lord has come of age, as in the last iter of Martin de Pateshull in the county of Norfolk, in the twelfth year of king Henry, an assise of Mortdancester if Eudo, the father of Walter, concerning thirty-six acres of land with the appurtenances in Esterbergh, which land Ranulph de Braham held, who called as warrantor thereof Roger de Bigot, who was under age, and by the charter of Henry Bigot earl of Norfolk, the father of the said Roger, and where it was accordingly held that an assise should be taken, and if the jurors should say that Eudo died seysed as of fee, and Walter should have recovered his seysine, that Ranulph should wait until the full age of Roger, and then have his recovery against Roger concerning the warranty. Likewise it is said, "in such a vill," to which it may be answered as above concerning novel disseysine, if an error be found in the writ.

f. 270

3. Likewise on the day on which he died.

Likewise as to this which he says, "on the day on "which he died" it may be excepted and answered, that although the ancestor was in seysine at some hour of the day, nevertheless he did not die seysed, because when he was in seysine in the morning or at some other hour of the day, on the same day he gave away that land to so-and-so at the third hour, and he died at the ninth hour.

ante mortem suam dimisit se & terram illam dedit tenenti ei qui nunc tenet per chartam suam quam profert, et ita q finis factus fuit in curia domini regis, & cyrographum per breve de warantia chartæ, et ita q prædictus antecessor in curia domini regis recognovit donum et warantizavit ei terram illam, sicut illam quam tenuit et habuit de dono suo.

4. Casus Roberti de Suche.

Ad q potest petens replicare et dicere, q quicquid tenens dicat de donatione vel charta, nunquam seysinam habuit per donum nec per chartam illam, sed ille qui donasse debuit, semper in seysina remansit post chartam sicut ante, et nunquam statum mutavit, sed ita obiit seysitus ut de feodo, et inde ponit se super assisam. Dicere etiam poterit q finis et cyrographum ei nocere non debeant, cùm dependeant ex dono q principale esse debuit, q quidem nullum est, et cùm principale non subsistat, ea quæ sequuntur locum habere non debent. Item dicere possit et firmare intentionem suam, q breve de warantia chartæ per falsam suggestionem fuit impetratum, p hoc q dedit curiæ domini regis intelligi, q fuit in seysina et non fuit, et unde cyrographum q subsequitur ex tali falsitate & deceptione valere non debet. Item nec recognitio facta ab eo qui donasse debuit (q talis fuit in seysina cùm non esset) valere debet, quia non convenit naturæ confessio nec veritati, et q talis ita obiit seysitus petit assisam. Ad q si tenens se tenuerit ad finem et de replicatione petentis se noluerit ponere in assisam, indefensus remanebit, et sic amittet p judicium sine jurata vel assisa, indefensus enim esse poterit petens contra tenentem quoad exceptionem, eodem modo quo

Likewise long before his death he released himself and gave away that land to the tenant, who holds it now by his charter which he now produces, and so that a fine was levied in the court of the lord the king, and a chirograph by a writ of warranty of the charter, and so that the ancestor aforesaid in the court of the lord the king acknowledged the gift and warranted to him that land, as land which he held and had of his gift.

4. The case of Robert de Suche.

To which the claimant may reply and say, that whatever the tenant says of a donation and a charter, he never had seysine by gift or by that charter, but he who ought to have given it away remained always in seysine after the charter as before, and never changed his status, but died seysed of it as of fee, and thereon he puts himself upon an assise. He may also say that a fine and chirograph ought not to harm him, since they depend upon a gift which ought to be the principal thing, which indeed is null, and since the principal thing does not subsist, those things which follow cannot have place. Likewise he may say and strengthen his declaration, that the writ concerning the warranty of a charter has been obtained under a false suggestion, inasmuch as he gave it to be understood by the court of the lord the king, that he was in seysine, and he was not so, and hence the chirograph which follows from such a falsehood and deception ought not to avail. Likewise the recognition made by him who ought to have given it away "that he was in seysine, when he was not," ought not to avail, because the confession does not agree with nature nor truth, and he claims an assise that so-and-so died so seysed. To which if the tenant has kept himself to the end and has refused to put himself on the assise concerning the replication of the claimant, he will remain without defence, and so will lose by a judgment without a jury or an assise, for the claimant may be without defence against the tenant as regards the exception, in the same manner in which the tenant may be without defence against the claimant as regards the

et tenens contra petentem quoad actionem, si actioni sive intentioni petentis respondere noluerit, & illud idē dici poterit de replicatione et triplicatione, et ulteriùs. Cùm autem tenens gratis se posuerit in assisam vel juratam, p hoc terminabitur negotium de seysina. Item dicere possit q non obiit seysitus antecessor, qa longè ante mortē suam fuit disseysitus et sibi pquirere noluit in vita sua ppter suā negligentiam, vel non potuit ppter suam impotentiam, et sic cadit in assisam mortis antecessoris finis factus assisæ novæ disseysinæ. Item dicere poterit q ille de cujus morte pfert assisam vivus est.

5. Propinquus hæres et alius adeo propinquus.

Itē ad hoc q dicit (ppinquior heres) excipi potest et responderi q alius est ppinquior, licet ipse petens ppinquus sit, vel ppter etatē vel sexum ut supra. Itē dicere potest q si talis sit ppinquior, alius est adeò ppinquus, cùm terra sit partibilis et qui non nominatur in brevi. Itē dicere potest q ille qui petit sicut heres ppinquior nō potest esse heres ppinquior nec ppinquus nec remotus, quia villanus, et sic cadit in assisam mortis antecessoris quæstio status, et qualiter determinari debet illa exceptio perpendi poterit ut supra in tractatu de nova disseysina. Item si quis in actione proprietatis per breve de recto petierit id q quis tenuerit in dominico in dominico, et id quod in servitio in servitio, id q semel in servitio petierit, nunquam postea petere potest in dominico. Secus tamen est in causa possessionis, ut si quis petat per assisam mortis antecessoris, poterit petens corrigere errorem, & non tenet talis replicatio in causa proprietatis.

f. 270 b.

action, if he is unwilling to answer to the action or the declaration of the claimant, and the same thing may be said concerning the replication and the triplication, and further. But when the tenant has gratuitously put himself upon an assise or a jury, the affair concerning the seysine will be thereby terminated. Likewise he may say that the ancestor did not die seysed, because he was disseysed long before his death, and was unwilling to claim it for himself in his lifetime on account of his negligence, or he could not from his powerlessness, and so a fine made of an assise of novel disseysine falls into an assise of mortdancester. Likewise he may say that he, concerning the death of whom he has brought an assise, is alive.

5. A next heir, and another equally near.

Likewise with regard to what he says, "the next heir," it may be excepted to and answered, that another is nearer, although the claimant is a near heir, either on account of age or of sex as above. Likewise he may say that if so-and-so is a next heir, another is equally near, since the land is partible, and who is not named in the writ. Likewise he may say that he who claims as next heir cannot be the next heir nor a near heir nor a remote heir, because he is a villein, and so a question of status falls into an assise of mortdancester, and how that exception ought to be determined may be ascertained above in the treatise on novel disseysine. Likewise if any one in an action of property has claimed through a writ of right in demesne that which a person held in demesne, and in service that which a person held in service, he can never afterwards claim in demesne that which he has once claimed in service. It is otherwise however in a cause of possession, as if a person has claimed by an assise of mortdancester, he may in claiming correct his error, and such a replication is not binding in a cause of property.

f. 270 b.

6. Exceptio super id quod dicitur "talis tenet."

Item (quam terram talis tenet), ad quod potest excipi & responderi à tenente, quod totam non teneat, cum tota ab eo petatur, nec in tenemento nec in ejus pertinentiis, sicut illam petit, nec sicut antecessor illam tenuit. Item si dicat quòd totum tenementum non teneat, sed alius talis, & ex adverso respondeatur q ille talis villanus sit ipsius tenentis, & de eo teneat in villenagio, nisi ille qui hoc exceperit statim habeat probationes ad manum, parentes vel alias,[1] recedet tenens quietus de hoc brevi: ut de itinere abbatis de Rading et M. de Pateshul in com̃ Warr̃, assisa mortis, si Fredericus.

Cap. XIII.

1. Exceptio, si petens remisit vel confirmavit, postquam jus ad eum descendit.

Præter exceptiones & responsiones quæ nascuntur ex articulis brevis, sunt aliæ exceptiones plures, quasi extra vagantes, quæ proveniunt à casu sive ab eventu, & quarum quædam differunt assisam ad tempus & quædam breve perimunt, & quædam assisam. Si autem breve perimant propter errorem, tunc fiat ut supra in aliis assisis. Videndum est igitur quando & p quas exceptiones cadit assisa inprimis, et sciendum quòd respondere poterit tenens et excipere, q licet omnes articuli supradicti in brevi contenti veri sint, tamen ille qui nunc petit ut hæres propinquior non habet actionē per assisam, quia alius hæres ꝑpinquior ante ipsum petentem intercedens, & qui antecessorē communem (de cujus morte nunc petens ꝑfert assisam) supervixit, licet seysinam non haberet, totum jus suum in possessione & in proprietate quod ei descendit vel descendere potuit remisit, & quietum clamavit prædicto tali tenenti. Et inde habeat probationem, char-

[1] "vel alios," MS. Rawl. C. 159.

Likewise "which land such an one holds," to which it may be excepted and answered by the tenant, that he does not hold the whole, when the whole is claimed from him, neither as regards the tenement, nor its appurtenances, as he claims it, nor as his ancestor held it. Likewise if he should say that he does not hold the whole tenement, but another person, to wit, so-and-so, and it be answered from the adverse side that so-and-so is a villein of the tenant's, and holds from him in villenage, unless he who has made this exception has proofs at hand, his parents or others, the tenant shall go away quiet as concerns this writ, as in the iter of the abbot of Reading and Martin de Pateshull in the county of Warwick, an assise of mortdancester, if Frederick.

6. An exception upon that which is said, "that such an one holds."

Chapter XIII.

Besides the exceptions and the answers which arise on the articles of the writ, there are many other exceptions, as if out of the way, which arise out of accident or the event, and of which some put off the assise for a time, and some are fatal to the writ, and some to the assise. But if they are fatal to the writ on account of an error, then let it be done as above stated in other assises. We must see, therefore, when and by what exceptions the assise fails in the first place, and it is to be known that the tenant may answer and except, that although all the above articles contained in the writ are true, nevertheless he who now claims as next heir has no right of action by an assise, because another heir nearer and intervening before the claimant, and who survived the common ancestor, concerning whose death the claimant propounds an assise, although he had not seysine, released all his right in the possession and in the property, which descended to him or could descend to him, and quit-claimed such aforesaid tenant. And he thereupon produces proof, a charter or an assise, to

1. An exception, if the claimant has released or confirmed it, after the right has descended to him.

tam vel assisam, ad quod habeat petens si possit replicationem. Item potest tenens excipere et respondere, quòd sine domino rege non debet respondere, quia terram illam tenet de dono domini regis ut in seriantia, vel de eschaeta sua, vel alio modo: quo casu, requirenda erit voluntas ipsius domini regis. Item eodem modo si de alio teneat quàm de domino rege, si confirmationem habeat ipsius domini regis, dum tamen per confirmationem talem tenetur dominus rex ad excambium sine eo non respondebit. Si autem non teneatur ad excambium, sine eo respondebit. Item excipere potest & dicere, quòd terram illam tenet de dono alicujus post mortem talis antecessoris sicut alicujus fratris ipsius petentis antenati, si replicetur quòd donare non potuit: triplicetur quòd pater eorum communis dedit, & licet donum non valeret quasi imperfectum, quia talis antecessor donator seysitus obiit, ille frater antenatus, licet seysinam non haberet, illud donum patris sui confirmavit, & quod ab initio invalidum fuit quia imperfectum, per confirmationem validum fecit & ꝑfectum, quia confirmatio supplevit defectum. Item respondere poterit ꝗ terram illam tenet de dono antecessoris, de cujus morte petens ꝑfert assisam. Quo casu, si replicetur ꝗ in vita talis nunquam seysinam habuit, triplicari poterit à tenente ꝗ ille petens donum patris vel alterius antecessoris, licet non plenum vel non ꝑfectum, tamen sicut aliquod & inceptum confirmavit. Item respondere poterit ꝗ pater petentis per assisam villanus fuit, & ideò quòd hæres esse non possit. Ad ꝗ si replicetur à petente ꝗ licet talis antecessor suꝰ villanus esset, tamē liberatus fuit à villenagio cum tota sequela sua quocūq; modo liberationis, & cum patri vel alteri antecessori suo com-

Britton, iii. ch. xi. § 12.

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Britton, iii. ch. xx. § 3.

which let the tenant produce, if he can, a replication. Likewise the tenant may except and answer that he cannot answer without the lord the king, because he holds that land from the king's gift as in serjeanty or as his escheat, or in some other way, in which case the pleasure of the king will have to be requested. Likewise in the same way if he holds it from some one else than the lord the king, if he has the confirmation of the lord the king, provided that by such confirmation the lord the king is bound to make compensation to him, he shall not answer without him. But if he is not bound to make compensation, he shall answer without him. Likewise he can except and say, that he holds that land from the gift of some one after the death of the said ancestor, as of some elder-born brother of the claimant himself, if it be replied that he could not give it away, it may be triplicated that their common father gave it away, and although the gift was not valid being imperfect, because such ancestor died seysed of it, the elder-born brother although he had not seysine, confirmed the gift of his father, and what was at the commencement invalid because imperfect, he made valid and perfect by his confirmation, because his confirmation supplied the defect. Likewise he may answer that he holds that land by the gift of his ancestor, concerning whose death the claimant propounds an assise. In which case if it be replied that such a person never had seysine in his lifetime, it may be triplicated by the tenant that he claiming the gift of his father or other ancestor, although not full nor perfect, nevertheless confirms it as something commenced. Likewise he may answer that the father of the party claiming by an assise was a villein, and therefore that he could not be the heir. To which if it be replied by the claimant that although such ancestor of his was a villein, nevertheless he was freed from villenage with all his descendants in some way or other of freedom, and since his father or other ancestor

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peteret assisa novæ disseysinæ, si de tenemento illo disseysitus esset, & per assisam recuperare posset, eadem ratione competere deberet filio tale[1] & hæredi vel filiæ sicut sequelæ suæ assisa mortis antecessoris de teñto de quo pater sic obiit seysitus ut de feodo. Filii verò sive filiæ villani sub potestate domini sui sine manumissione in villenagio manentes si pquisitum fecerint extra villenagium, nullum habebunt hæredem nisi dominum suum, dum tamen in vita villani in manum suam ceperit illud teñtum vel post mortem.

2. Exceptio, ubi non jacet assisa mortis antecessoris.

Britton, *ib.* § 4.

Item si soror contra sororem petat p assisam teñtum q descendat à communi stipite, excipi poterit à sorore tenente q assisa non jacet ppter paritatem juris, cùm quelibet illarum quoad seysinam & quoad jus sit hæres propinquior, & ideò q agi oportet de jure p breve de propatre.[2] Item si duæ sorores petant simul p assisam, quarum una sit legitima & altera bastarda, et cùm juratores hoc testati fuerint, & q una illarum ante sponsalia nata fuit & alia post, nihilominùs pcedet assisa & utraq p assisam recuperabit, salvo jure cujuslibet imposterū, & ita q soror legitima cùm voluerit & ad ætatem pervenerit agat contra sororem. p breve de recto, & opponat bastardiam sorori tenenti replicando: ut de itinere M. de P. in coñ Suff. assisa mortis antecessoris de quadam Mabilia & Johanna.

Consuetudo Cornubiæ.

Illud etiam dici poterit (ut videtur) de villano participe cum liberis, quia eadem ratio & idem jus, secundùm q observatur in coñ Cornubiæ de consuetudine quæ talis est, q si liber homo ducat nativam aliquam in uxorem ad liberum teñtum & liberum thorum, si

[1] "tali," MS. Rawl. C. 160.

[2] "proparte," MSS. Rawl. C. 160 and 159.

was entitled to an assise of novel disseysine, if he had been disseysed from that tenement, and might recover it by an assise, for the same reason his said son and heir or his daughter as his descendant was entitled to an assise of mortdancester concerning the tenement of which the father so died seysed as as of fee. But the sons or daughters of a villein remaining under the power of their lord without manumission in villenage, if they have made an acquisition out of villenage, shall have no heir but their lord, provided always he has taken the tenement into his hand in the lifetime of the villein or after his death.

2. An exception, where an assise of mortdancester does not lie.

Likewise if a sister claims against a sister by an assise a tenement which descends from a common stock, an exception may be raised by the sister who is the tenant, that an assise does not lie on account of the parity of right, since each of them as regards the seysine and as regards the right is a next heir, and therefore that the trial of right should be conducted by a writ of proportion. Likewise if two sisters claim together by an assise of which one is legitimate and the other a bastard, and when the jurors have testified to this, and that one of them was born before espousals and the other after them, nevertheless the assise shall proceed and both shall recover by the assise, saving the right of each afterwards, and so that the legitimate sister, when she wills and after she has come of age, may proceed against her sister by a writ of right, and object bastardy to her sister tenant in her replication, as in the iter of Martin de Pateshull in the county of Suffolk, an assise of mortdancester concerning a certain Mabilia and Johanna. But this may also be said as it seems concerning a villein parcener with free men, because there is the same reason and the same right, according to what is observed in the county of Cornwall by a custom which is of this kind, that if a free man brings a nief as his wife to a free tenement and a free bed, if two daughters are procreated from them,

ex eis duæ pcreantur filiæ, una erit libera & altera villana, quia ibi partiti sunt pueri inter liberum patrem & dñm uxoris villanæ, sed in hoc casu videtur q ita debeat observari ut supra. Item potest tenens respondere hæredi petenti p assisam & concedere q hæres sit, sed seysinam habere non possit usq, ad tempus: ut de itinere W. de Ralegh in com̃ Buck. assisa mortis antecessoris, si Alicia. Ad q replicari poterit à petente q teñtum illud retinere non poterit p legem Angliæ, quia prolem non habuit cum uxore, & si pueros habuit, convicti sunt ad bastardos. Item si pueri mortui sunt in utero, vel nati monstruosi. Item si concedatur q talis obiit seysitus ut de feodo, tamen hæredes nihil capere poterunt per assisam, quia antecessore mortuo tenens q priùs tenuit ad terminum statim ex conventione & pacto incontinenti apposito incepit possidere ad vitam vel in feodo. Et unde si hæres inceperit p assisam petere, obstabit ei imperpetuum vel ad tempus exceptio conventionis, quia statim et sine mora in morte ipsius antecessoris sine tempore vel aliqua solennitate incipit tenens possidere ex ipsa conventione, quia si in feodo, jus quod descendere deberet heredi statim descendit possessori. Et eodem modo dici poterit de terra data pignori quod remaneat creditori, si pecunia suo die soluta non fuerit vel certæ psonæ à certa persona etiam sine die ut supra. Et etiam quòd creditor incipit possidere in feodo in ipsa morte debitoris si sine die, vel in crepusculo si ad diem, cùm tota dies cedat solventi: et ita eodem modo quo priùs statim & sine mora descendit jus merum ipsi creditori. Item si quis petat per assisam versus uxo-

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one shall be free and the other a villein, because there the children are shared between the free father and the lord of the villein woman, but in this case it seems, that it ought to be observed as above. Likewise a tenant may answer to an heir who claims by an assise and admit that he is the heir, but that he cannot have seysine for a time, as in the iter of William de Ralegh in the county of Buckingham, an assise of mortdancester, if Alice. To which it may be replied by the claimant that he cannot retain that tenement by the law of England, because he had no offspring with his wife, and if he had sons, they are proved to be bastards. Likewise if the boys have died in the womb or have been born monsters. Likewise if it be admitted that so-and-so died seysed as of fee, nevertheless his heirs can take nothing by an assise, because on the death of the ancestor the tenant immediately from an agreement and a pact forthwith added, began to possess for life or in fee that, which he previously held for a term. And hence if the heir begins to claim by an assise, the exception of the agreement will be in his way in perpetuity or for a time, because forthwith and without delay on the death of the ancestor without time or any solemnity the tenant begins to possess from that agreement, because if in fee, the right which ought to descend to the heir descends forthwith to the possessor. And in the same way it may be said of land given as a pledge, that it remains with the creditor, if the money has not been paid on its proper day or to a certain person by a certain person even without a day as above. And likewise that the creditor commences to possess in fee at the death of the debtor if the debt is without a day, or at nightfall if the debt is payable on a day, since the whole day is allowed to the payer, and so in the same way in which the absolute right descends to the creditor forthwith and without delay. Likewise if any one claims by an assise against a wife, who holds in the name of dower,

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rem quæ tenet nomine dotis, id quod plus teneat quàm ad ipsam pertineat tenere nomine dotis, quia ibi locum habet amensuratio.

3. Ubi non jacet assisa mortis antecessoris.

Item non jacet assisa, si soror petat per assisam versus nepotem filium sororis suæ, cui si replicando objectum fuerit quòd hæres esse non possit eo quòd pater suus villanus fuit, si nepos dicat quòd ipse liber sit & hæres legitimus matris suæ & etiam hæres ipsius amitæ petentis, non jacebit assisa, quia ista responsio spectat ad jus: ut de itinere Martini de Pateshull in comitat̃ Lincolniæ añо regis Henrici 10. assisa mortis antecessoris, si Agnes filia Evæ de Benyngworth. Item remaneat assisa, si mulieri petenti per assisam objiciatur q sororem habuerit, de qua sunt pueri superstites, qui tantundem juris habent quantum habet illa quæ petit. Ad quod si respondeat quòd tales pueri villani sunt & ex villana progeniti, licet hoc aliquo modo constiterit, assisa remanebit, quia hoc totum pertinet ad jus, ut supra de eodem: ut de itinere Wilhelmi de Ralegh in coñ Buck. assisa mortis antecessoris, si Henricus Russell. Item impeditur assisa, si petenti per assisam objiciatur quòd pater suus villanus fuit, & ipse contra, quòd statu liber fuit & statu liber obiit, & extra potestatem domini sui. Et quia petitus in servitutem perquisivit sibi breve de pace usq; ad adventum justiciariorum & pacem habuerit, sed ante adventum eorum obiit in statu libero, & sic processit assisa non obstante illa exceptione. Item si frater antenatus filium habuerit vel filiam, nepotem vel neptem, & frater postnatus de morte fratris medii petat per assisam versus extraneam personam, si filius vel alius hæres ex fratre antenato mortuo producantur, vel aliquo modo consti-

that which she holds in excess of what it belongs to her to hold in the name of dower, because an admeasurement has a place there.

3. Where an assise of mortdancester has not a place.

Likewise an assise does not lie, if a sister claims by an assise against a nephew the son of a sister, to whom if by way of replication it has been objected that he cannot be the heir, inasmuch as his father was a villein, if the nephew says that he is himself free and the legitimate heir of his mother, and also the heir of the aunt herself who is the claimant, the assise shall not lie, because that response has regard to the right, as in the iter of Martin de Pateshull in the county of Lincoln in the tenth year of king Henry, if Agnes the daughter of Eve of Benyngworth. Likewise let the assise be stayed, if to a woman claiming by an assise it be objected that she had a sister of whom there are surviving children, who have as much right as she who claims. To which if she should answer that such children are villeins and begotten of a villein woman, although this may have been in some manner established, the assise shall be stayed, because all this appertains to the right, as above concerning the same, as in the iter of William de Ralegh in the county of Bucks, an assise of mortdancester, if Henry Russell. Likewise the assise is impeded, if to the claimant by an assise it be objected that his father was a villein, and he himself says on the contrary that he was of a free status and died in a free status and beyond the power of his lord. And because having been claimed into servitude he obtained for himself a writ of peace until the arrival of the justiciaries, and had peace, but before their arrival he died in a free status, and so the assise proceeded notwithstanding that exception. Likewise if an elder-born brother has had a son or a daughter, a grandson or a granddaughter, and an afterborn brother claims an assise concerning the death of an intermediate brother against an extraneous person, if the son or other heir of the elder-born brother who is dead be produced, or it

terit quòd talis[1] extiterint per juratores cum sacramēto vel sine, cadit assisa. Si autem non producantur, vel constare nō possit quòd tales extiterint, vel fortè juratores dubitaverint utrum ita sit vel non, tunc inter partes procedet assisa. Item cadit assisa, si tenens excipiat quòd ille qui petit vel alius hæres propinquior alia vice movit ei litem de eadem terra, & tunc remisit jus, vel si hoc fecerit sine lite non refert, dum tamen hoc probari possit quocunq; modo. Item si per judicium vel concordiam ei remansit tenementum. Item cadit assisa, si ordo brevium non servetur, ut si cùm primò egerit per breve de recto, & postea agere velit per assisam. Item non jacet inter fratrem antenatum & postnatum cùm postnatus in seysina fuerit, nec e contrario de morte fratris medii & ubi frater antenatus non possit esse hæres & dominus, cùm locum ibi habeat breve de recto & non assisa mortis antecessoris: ut de itinere episcopi Dunelmens. & M. de Pateshull in comitatu Eborum anno regni regis H. quarto, assisa mortis antecessoris, si Rogerus de Maundeville. Item non jacet assisa, ubi petitur per assisam tenementum in dominico ab eo, qui nihil habet in dominico nisi tantum servitium: ut de itinere abbatis de Rading & Mart. de Pateshull in comitatu Hereford, assisa mortis antecessoris, si Wilhelmus Nowell. Item cadit assisa propter confirmationem factam ab eo, qui irritare posset donum & revocare, nisi ipse petens docere possit manifestè quòd antecessor suus, de cujus morte profert assisam, seysitus fuerit de terra illa & inde seysitus obierit. Item cadit assisa propter consuetudinem loci, ut in civitatibus, burgis, & villis & terris, & tenementis quæ sunt de perquisito, sicut in

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[1] "tales," MS. Rawl. C. 160.

has been established in any way that such existed by jurors with or without an oath, the assise falls. But if they are not produced or it cannot be established that any such existed, or by chance the jurors have doubted whether it was so or not, then the assise shall proceed between the parties. Likewise the assise falls, if the tenant should except that he who claims or another next heir has on another occasion raised a suit against him concerning the same land, and then renounced his right, or if he has done this without a lawsuit it does not matter, provided this can be proved in any way. Likewise if the tenement has remained with him through a judgment or an accord. Likewise the assise falls, if the order of the writs is not observed, as if when he has first proceeded through a writ of right and has afterwards desired to proceed by an assise. Likewise it does not lie between an elder-born and a younger-born brother when the younger-born has been in seysine, nor on the contrary concerning the death of an intermediate brother, and where the elder-born cannot be the heir and the lord, since a writ of right has a place there, and not an assise of mortdancester, as in the iter of the bishop of Durham and Martin de Pateshull in the county of York in the fourth year of the king, an assise of mortdancester, if Roger de Maundeville. Likewise an assise does not lie where a tenement in demesne is claimed by him who has nothing in demesne but only a service, as in the iter of the abbot of Reading and Martin de Pateshull in the county of Hereford, an assise of mortdancester, if William Nowell. Likewise the assise falls on account of a confirmation made by him, who can invalidate the gift and recall it, unless the claimant can prove manifestly that his ancestor, concerning whose death he propounds the assise, was seysed of that land and died seysed of it. Likewise the assise falls on account of the custom of the place, as in cities, boroughs, and vills and lands and tenements which have been purchased, as in

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civitate London & alibi de terris & tenementis quæ vendi possunt sicut catallum. De aliis verò quæ hæreditariè descendunt bene jaceret assisa, quia legari non possunt non magis quàm aliæ terræ forinsecæ in quibus jacere deberet assisa, quia legari non possunt, nec videtur ratio quare non. Revera terminatum est quòd potest legari ut catallum tam hæreditas quàm perquisitum per baroñ Londoñ, & burgenses Oxoñ, & ideò verum est quòd in burgis non jacet assisa mortis antecessoris. Item nec in dominicis domini regis jacet assisa mortis antecessoris nec novæ disseysinæ, quia ibi non est liberum tenementum sed villenagium privilegiatum, nec etiam breve de recto magnum, quia loco omnium accipitur parvum breve secundùm consuetudinem manerii, vel aliud breve formatum, licet aliquando jaceat in membris: ut de itinere abbatis de Rading & M. de Pateshull in comitatu Leyces. assisa mortis antecessoris, si Gilbertus.

4. Ubi cadit assisa.

Item cadit assisa si petatur tenementum vel servitium per assisam ab eo qui nihil clamat in tenemento. Item si petat tenementum in dominico ab eo qui nihil tenet nisi in servitio & homagio. Item si partim petat in servitio de eo qui tenet tenementum in dominico, responderi potest quòd nihil clamat in servitio nisi tantum in tenemento. Si autem petat tenementum ubi tenens nihil habet nisi servitium, respondere potest quòd nihil clamat in tenemento nisi tantum in servitio & homagio, vel in neutro, & ideò sine die. De hac materia habetis in itinere abbatis de Rading & M. de Pateshull in comitatu Warr̃, assisa mortis, si Wilhelmus Turpin. Item cadit assisa, si dicat petens quòd petit id, quod tenens tenet in dominico, in dominico, & id quod tenet in servitio, in servitio, non va-

the city of London and elsewhere concerning lands and tenements which may be sold like a chattel. But concerning other things which descend by inheritance an assise would well lie, because they cannot well be bequeathed no more than other forinsec lands in which an assise ought to lie, because they cannot be bequeathed, nor does there seem any reason why not. In truth it was determined by the barons of London and the burgesses of Oxford what may be bequeathed as a chattel, as well inheritance as property purchased, and therefore it is true that in boroughs no assise of mortdancester lies. Neither does an assise of mortdancester or of novel disseysine lie in the demesnes of the lord the king, because it is not there a free tenement but a privileged villenage, nor does a great writ of right, because in the place of all there is accepted a little writ according to the custom of the manor, or another writ in a special form, although it lies sometimes in the members, as in the iter of the abbot of Reading and Martin de Pateshull in the county of Leicester, an assise of mortdancester, if Gilbert.

4. Where an assise falls.

Likewise an assise falls if a tenement or service is claimed through an assise from him who claims nothing in the tenement. Likewise if he claims a tenement in demesne from him who holds nothing except in service and homage. Likewise if he claims partly in service from him who holds the tenement in demesne, it may be answered that he claims nothing in service, but only in the tenement. But if he claims the tenement, where the tenant has nothing except the service, he may answer that he claims nothing in the tenement, but only in the service and homage, or in neither, and therefore he is without a day. On this subject you have a judgment in the iter of the abbot of Reading and Martin de Pateshull in the county of Warwick, an assise of mortdancester, if William Turpin. Likewise an assise falls if the claimant says that he claims in demesne that which the tenant holds in demesne, and in service that

let; quia oportet petentem ita petere & tali modo per omnia, secundùm quod antecessor inde seysitus fuerit die quo obiit, scilicet totum in dominico secundùm formam brevis. Item cadit assisa, si petens petat per assisam quod per judicium amisit, quia cadit assisa propter exceptionem rei judicatæ, & agat si voluerit de falso judicio. De hac materia invenitur in rotulo de placitis quæ sequuntur regem anno regni regis Henrici vicesimo primo in comitatu Eborum, assisa mortis si Stephanus de Pulthorp. Item cadit assisa propter incertitudinem, ut si ille qui petat nesciat juratoribus rem petitam ostendere vel designare, nec quid nec quantum petierit, nec ubi nec in quo loco. Item remaneat assisa propter assisam quæ præcessit inter easdem personas de eodem tenemento & de eadem seysina, quia assisa super assisam capi non debet, secundùm quod inferiùs dicetur pleniùs. Sed si probari possit aliquo modo, ut si talis natus fuerit in aliquo comitatu ubi breve domini regis non currit, mittant justiciarii de consilio curiæ ad comitatum in quo talis natus fuerit ad inquirendam veritatem super articulo illo tantum, & inquisitâ veritate procedant justiciarii pro vel contra. Breve quidem tale est. Vicecom̃ salutem. Scias quòd cùm assisã mortis·antecessoris summonita esset &c. & sic totum factum de hac materia ut supra de assisa novæ disseysinæ, & inde sine brevi poterit negotium & inquisitio fieri, si justiciarii venerint personaliter ad comitatum illum. Et sciendum quòd primi juratores qui ignorant non dant nec auferunt, quia jus merum revertitur ad dominum capitalem

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which he holds in service, it does not avail, because it is incumbent that the claimant should so claim and in such manner throughout in all things, according as the ancestor was seysed thereof on the day on which he died, to wit, the whole in demesne according to the form of the writ. Likewise the assise falls, if the claimant claims by an assise what he has lost by a judgment, because the assise falls on account of the exception that the matter has been adjudicated, and let him proceed, if he pleases, for a false judgment. On this subject there is found a judgment in the Roll of the Pleas which follow the king in the twenty-first year of the reign of king Henry in the county of York, an assise of mortdancester, if Stephen de Pulthorp. Likewise an assise falls on account of uncertainty, as if he who claims knows not to show or designate to the jurors the thing claimed by him, nor what nor how much he has claimed, nor where nor in what place. Likewise the assise should be stayed on account of an assise, which has preceded between the same persons concerning the same tenement and concerning the same seysine, because an assise ought not to be held upon an assise, according to what will be said below more fully. But if it can be proved in any way, as if so-and-so was born in some county where the writ of the king does not run, let the justiciaries upon the advice of the court send to the county, where so-and-so was born, to inquire into the truth upon that article only, and upon the truth having been inquired into, let the justiciaries proceed for or against. The writ indeed is of this kind: To the viscount greeting. Know, that when an assise of mortdancester had been summoned &c., and so the whole act upon this subject as above upon an assise of novel disseysine, and hence the business and inquisition may be held without a writ, if the justiciaries have come personally to that county. And it is to be known that the first jurors who know nothing neither give nor take away, because the mere right reverts to

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cùm sit pro hærede, & ideò nullus poterit esse hæres propinquior licet propinquus quo ad seysinam, quia nulli descendit jus merum. Item cadit assisa propter plurium hæredum conjunctionem, qui sunt quasi unus hæres & unum jus habentes, sive sint petentes sive tenentes, si omnes in brevi non nominentur, secundùm quod inferiùs in brevi[1] pleniùs dicetur in tractatu de exceptionibus. Item petens nihil capiat per assisam ubi juratores ipsum non cognoverint, vel si cognoverint personam, nesciunt si sit hæres vel non; vel si sciverint quòd sit hæres, nesciunt tamen utrum propinquus vel remotus, quia quotienscunque dubitatur an quid sit, perinde est ac si non esset illud. Et quia, si juratores nihil sciverint vel dubitaverint, nihil probant dictum petentis, & sic deficit probatio licet jus non deficiat. Item si dicant juratores quòd ille qui petit, fratrem habet antenatum in partibus transmarinis (ut credunt) sed nesciant utrum mortuus fuerit vel non, sed bene dicant quòd si mortuus esset, iste qui petit esset hæres propinquior, tunc per officium judicis detur seysina petenti sub tali conditione, quòd si frater antenatus vivus redierit, quòd frater postnatus qui petit sine placito restituat ei seysinam suam cùm redierit, & sic erit in pendenti seysina fratris postnati, donec de morte fratris antenati constiterit. De hac materia habetis de itinere Wilhelmi de Ralegh in comitatu Buck. assisa mortis, si Richardus Faber. Et quid si frater postnatus sic moritur seysitus relictis hæredibus infrà ætatem existentibus, & tunc redeat frater antenatus, vel si hæredes plenæ sint ætatis, quæritur an sine judicio possint expelli? videtur quòd bene possunt, quia pater

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[1] "in brevi," omitted MS. Rawl. C. 160.

the chief lord, since he is in the place of an heir, and therefore no one can be a nearer heir although a near heir as regards seysine, because the mere right descends to no one. Likewise an assise falls on account of the conjunction of several heirs, who are as it were one heir and having one right, whether they are claimants or tenants, if they are not all named in the writ, according to what will be explained below in a writ more fully in the treatise on exceptions. Likewise a claimant gains nothing by an assise, where the jurors have not had any knowledge of him, or if they have knowledge of his person do not know whether he is the heir or not, or if they know that he is an heir they know not whether he is a near or a remote heir, because as often as it is doubted whether a thing be, it is the same as if it were not, and because if the jurors know nothing or have doubts, they do not prove the statement of the claimant, and so the proof fails, although the right may not fail. Likewise if the jurors should say that he who claims has an elder-born brother in transmarine parts (as they believe), but they know not whether he is dead or not, but they say well that if he is dead, he who claims is the next heir, then through the office of the judge let there be given seysine to the claimant on this condition, that if the elder-born brother should have returned alive, the after-born brother who claims shall restore to him without a plea his seysine when he has returned, and so the seysine of the after-born brother will be suspended until it has been ascertained concerning the death of the elder-born brother. On this subject you have a judgment in the iter of William de Ralegh in the county of Bucks, an assise of mortdancester, if Richard Faber. And what if an after-born brother dies so seysed leaving heirs who are under age, and then the elder-born brother should return, or if the heirs should be of full age, it is questioned whether they can be expelled without a judgment. It seems that they may well be so, because their

eorum, qui inde seysitus obiit nullum habuit feodum in vita fratris antenati, nisi conditionale. Item[1] casus. Filius & hæres interficit patrem, descendit jus hæredi non obstante felonia & cum eo remanet donec convincatur, & eo convicto & in seysina existente retrohabitur tempus usque ad perpetrationem feloniæ, & nihil descendet ad hæredes propter seysinam. Si autem nullam seysinam habuerit, & postnatus assisam portaverit de seysina patris communis.

5. Si felonia objecta fuerit. f. 273.

Item cadit assisa propter feloniam objectam & convictam, ut si antecessor de cujus seysina petitur, vel ille qui petit per assisam, vel alius hæres intercedens qui antecessorem supervixerit, vel si utlagatus fuerit propter contumaciam licet de felonia non convictus, vel si convictus fuerit & ad pacem restituatur, cadit assisa: & quamvis quis feloniam fecerit & antequam convincatur objecerit fortè ante mortem patris vel alterius antecessoris, de cujus morte assisam protulit, procedet assisa & non remanebit.

6. Si duo petant per assisam versus unum.

Item differtur assisa, ut si duo petant unum & idem tenementum versus eundem per assisam, ad ultimam assisam erit recurrendum, & differri debet prima usque ad captionem secundæ, quia non debet unus de eodem tenemento duobus simul respondere, & hoc sive petant per assisam de seysina unius antecessoris vel duorum. Et si de seysina duorum, primò debet procedere assisa de seysina ejus qui ultimo obiit seysitus: ut de itinere abbatis de Radinge in comitatu Hereford anno regis Henrici quinto incipiente sexto, assisa mortis antecessoris, si Laurentius Galant. Item cadit assisa per sey-

[1] "Item casus" down to "communis" omitted, MS. Rawl. C. 159.

father who died seysed thereof had no fee in the lifetime of his elder brother, except a conditional one. Likewise a case. A son and heir slays his father, the right descends to the heir notwithstanding the felony, and remains with him until he is convicted, and upon his conviction and his being in seysine the time is traced back to the perpetration of the felony, and nothing will descend to the heirs on the ground of seysine. But if he had no seysine, and the after-born son has brought an assise concerning the seysine of their common father.

5. If felony has been objected. f. 273.

Likewise the assise falls on account of an objection of felony and a conviction for it, and if the ancestor from whose seysine the claim is made, or he who claims by the assise, or another intervening heir who has survived the ancestor, or if he has been outlawed on account of contumacy although not convicted of felony, or if he has been convicted of felony and restored to the king's peace, the assise falls, and although a person has committed a felony and before he is convicted has raised the objection by chance before the death of the father or other ancestor, concerning whose death he has propounded an assise, the assise shall proceed and not be stayed.

6. If two claim by an assise against one.

Likewise the assise is deferred, if two persons claim one and the same tenement against the same person by an assise, recourse must be had to the last assise, and the first ought to be deferred until the holding of the second, because one person ought not to have to answer at the same time to two persons concerning the same tenement, and this whether they claim by an assise from the seysine of one ancestor or of two. And if from the seysine of two, the assise ought to proceed in the first instance concerning the seysine of him who died last seysed, as in the iter of the abbot of Reading in the county of Hereford, in the fifth and sixth years of king Henry, an assise of the death of an ancestor, Lawrence Galant. Likewise the assise falls through the seysine of an heir

sinam alicujus hæredis habitam post mortem alicujus antecessoris cujus seysina petatur, quia si hæres cùm semel seysinam habuerit donationem[1] fecerit, si ad assisas recurrere posset, à se ritè factas irritare posset.

7. Qualis seysina habita tollit seysinam.

Videndum est igitur qualis seysina tollit assisam & quæ non. Et sciendum quod si seysina momentanea fuerit quòd tenens in tam modico tempore donationes fecisse non potuit & alienationes, vel si fortè infrà ætatem fuerit quòd donationes ab eo factæ tenere non debeant, vel si per modicum tempus post mortem antecessoris sui per intrusionem vel per disseysinam & postea ejectus recenter, vel cùm disseysitus recuperaverit versus ipsum per assisam novæ disseysinæ, non obstante tali seysina ipse hæres habebit assisam mortis antecessoris, quia talis seysina quam priùs habuit convicta est ad nullam, sive injuriosam, tum quia parva fuit intrusio, tum quia ea durante nulla facta fuit donatio ab hærede, nec alienatio nec possessionis mutatio. Et si aliquis inde ejectus fuerit, recuperat seysinam suam adeò plenè & integrè sicut illam amisit. Sed cùm hæres petat post talem disseysinam per assisam mortis antecessoris, & objiciatur ei quòd assisam mortis antecessoris demeruit, eo quòd sine judicio propria autoritate sibi usurpavit quod per assisam petere debuit, si obstare debeat talis exceptio? non video quare non. Si quis autem exceptionem seysinæ priùs habitæ opposuerit, oportet duo probare, quòd in seysina extiterit & quòd donationes fecerit dum fuit in seysina, & quòd talis ætatis extiterit quòd donationes factæ revocari vel irritari non possunt, alioquin non valebit exceptio. Et unde si hæres hoc negaverit, per assisam captam in modum juratæ veritas declarabitur. Si autem objiciatur seysina quam quis habuerit dum

[1] "donationes," MS. Rawl. C. 160 and 159.

had after the death of an ancestor whose seysine is claimed, because if the heïr, when he once had seysine, has made donations, if he could have recourse to assises he might invalidate what he had duly made.

7. What sort of seysine, if it has been had, takes away an assise.

We must see therefore what seysine takes away an assise, and what not. And it is to be known that if the seysine be momentary, that the tenant could not in so short a time have made donations and alienations, or if by chance he was under age that donations made by him ought not to be binding, or if he was seysed for a short time after the death of his ancestor by an intrusion or a disseysine and was afterwards ejected recently, or when the person disseysed has recovered by an assise of novel disseysine, notwithstanding such a seysine the heir himself shall have an assise of mortdancester, because the said seysine which he had was proved to be null or unjust, as well because the intrusion was slight, or because, whilst it lasted, no donation was made by the heir, nor alienation, nor change of possession. And if any one has been ejected therefrom, he recovers his seysine as fully and entirely as he lost it. But when the heir claims after such a disseysine by a writ of mortdancester, and it is objected to him that he is not deserving of an assise of mortdancester, because that without a judgment of his own authority he has usurped to himself that which he ought to have claimed through an assise, if such an exception ought to stand in his way? I do not see why not. But if a person has opposed an exception of seysine previously had, he ought to prove two things, that he has been in seysine, and that he has made donations whilst he was in seysine, and that the said person was of such an age that the donations made by him cannot be revoked or invalidated, otherwise the exception will not avail. And hence if the heir has denied this, the truth shall be declared by an assise taken in the manner of a jury. But if the seysine be objected which a person has had whilst under age, it will not hurt,

fuerit infrà ætatem, non nocebit: quia non obstante tali seysina, si infrà ætatem donationes fecerit, illas revocare poterit per assisam mortis antecessoris, vel per breve de ingressu, vel per breve de recto: secundùm quod elegerit, sive donationem fecerit custodi suo sive alii, nisi cùm plenæ ætatis extiterit donationes illas confirmaveř. Assisam verò novæ disseysinæ contra tales non habebit, quamvis[1] infrà ætatem gratis exivit. Si autem custos dederit dum hæres fuerit infrà ætatem, habebit hæres assisam novæ disseysinæ & omnia alia remedia supradicta. Et notandum quòd seysina præhabita tollit hæredi assisam mortis antecessoris, cujuscunq; fuerit ætatis, si fuerit justa, licet pareat ei assisa novæ disseysinæ, ea ratione quòd conjuncta est possessio cum ipso jure: & ideò si recenter post mortem antecessoris ejectus fuerit hæres, habebit utramq; secundùm electionem suam, quia sese compatiuntur & nulla earum excludit aliam de recenti seysina, ordine tamen servato. Si autem fuerit injuriosa, non tollit assisam, quia non facit liberum tenementum hæredi, quia non possunt conjungi juri, nec valet conjunctio, cùm possit seysina revocari, nec valet juncta nisi jure juncta. Igitur cùm hæres seysinam antecessoris sui injustè sibi usurpaverit per disseysinam, talis seysina nulla erit, quia non facit hæredi liberum tenementum, & ideò non tollit assisam mortis, quia judicatur ad nullam. Item si cùm justa fuerit & hæres donationem fecerit dum fuerit infrà ætatem, tunc erit donatio invalida, ex quo revocari poterit ab hærede. Et ideò licet talis donatio revocari non possit per assisam novæ

f. 273 b.

[1] "quia quamvis," MS. Rawl. C. 160.

because notwithstanding such seysine, if he has made donations whilst under age, he may revoke them by an assise of mortdancester or by a writ of entry, or by a writ of right; according as he has chosen, whether he has made the donation to his guardian or to another person, unless he has confirmed those donations after he has been of full age. But he shall not have an assise of novel disseysine against such persons, because, although whilst under age, he has gratuitously gone out of them. But if the guardian has given them whilst the heir was under age, the heir shall have an assise of novel disseysine, and all the other remedies aforesaid. And it is to be noted that a previous seysine takes away from the heir an assise of mortdancester, of whatever age he may have been, if it was just, although an assise of novel disseysine is at his demand on the grounds that the possession has been conjoined with the right itself, and therefore if the heir has been recently ejected after the death of the ancestor, he shall have either according to his election, because they help one another and none of them excludes the other concerning the recent seysine, order however having been observed. But if it has been unjust, it does not take away an assise, because it does not constitute a free tenement to the heir, for they cannot be conjoined to the right, nor does the conjunction avail, since the seysine may be revoked, nor does the joining avail unless it be a just joining. Therefore when an heir has unjustly usurped the seysine of his ancestor through a disseysine, such a seysine will be null, because it does not constitute to the heir a free tenement, and therefore it does not take away an assise of mortdancester, because it is adjudged to be null. Likewise if when it has been just and the heir has made a donation whilst he was under age, then the donation will be invalid, inasmuch as it can be revoked by the heir. And therefore although such a donation cannot be revoked by an assise of novel disseysine on account

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disseysinæ propter factum proprium quale quale, non tamen tollitur assisa mortis antecessoris ad seysinam præhabitam rehabendam. Cùm autem hæres plenæ ætatis in seysina fuerit justa, quæ revocari non possit, & donationem fecerit, tenet donatio & tollit assisam. Si autem ejectus fuerit injustè, habebit assisam novæ disseysinæ & tollitur assisa mortis antecessorum propter seysinam præhabitam & justam. Si autem injuriosa fuerit (ut supra prædictum est) non tollit assisam mortis antecessoris, cùm sit nulla (ut supra), & si cùm justa fuerint fiant donationes tempore congruo & locum habere possit assisa mortis antecessoris, sic posset hæres omnes donationes suas ritè factas per assisam revocare, quod esse non debet. Et hæc est causa quare seysina præhabita tollit assisam mortis antecessoris & non alia. Item cadit assisa per exceptionem villenagii, ut si villanus sub potestate domini sui constitutus terram aliquam acquisiverit pro denariis suis tenendam liberè & ita obiit seysitus, si dominus suus (sub cujus potestate moritur) se posuerit in seysinam post mortem talis, filius villani per assisam mortis antecessoris non recuperabit versus dominum suum, hoc recognito quòd pater suus villanus & sub potestate domini sui obierit, ut de ultimo itinere M. de Pateshull in comitatu Suff. assisa mortis, si Wilhelmus de Carleton, quia ubi nulla assisa novæ disseysinæ in persona antecessoris, ibi erit nulla assisa mortis antecessoris in persona hærédis sed e contrario. Sed contra esset, si extra potestatem domini sui extiterit & in statu libero, & petitus in servitutem & perquisiverit sibi breve de pace & sic obierit ante iter justiciariorum. Si autem sub potestate constitutus sibi breve de pace perquisiverit, non valet:

of his own act whatever may be its legal quality, nevertheless an assise of mortdancester to have again the seysine previously had is not taken away. But when the heir being of full age has been in just seysine, which cannot be revoked, and has made a donation, the donation holds good and takes away an assise. But if he has been ejected unjustly, he will be entitled to an assise of novel disseysine, and an assise of mortdancester is taken away on account of the previously had seysine, which was also just. But if it were unjust (as aforesaid) it does not take away an assise of mortdancester, since it is null (as above); and if, when it has been just, donations are made at a suitable time, and an assise of mortdancester may have place, an heir may so revoke by an assise all his donations though duly made, which ought not to be. And this is the cause why the previously had seysine takes away an assise of mortdancester, and not any other. Likewise an assise falls through an exception of villenage, and if a villein established under the power of his lord has acquired some land in return for his own money to be held freely and has died so seysed, if his lord (under whose power he dies) has placed himself in seysine after the death of such a person, the son of the villein shall not recover by an assise of mortdancester, upon its being acknowledged that his father was a villein and died under the power of his lord, as in the last iter of Martin de Pateshull in the county of Suffolk, an assise of mortdancester, if William of Carleton, because where there is no assise of novel disseysine in the person of an ancestor, there will be there no assise of mortdancester in the person of the heir, but the contrary. But it would be otherwise if he were beyond the power of his lord, and in a free condition and claimed unto servitude, and he had obtained a writ of peace and so had died before the iter of the justiciaries. But if whilst established under the power of his lord he had obtained a writ of peace, it does not avail, unless

nisi procedat petitio per breve de nativis. Item cadit assisa aliquando propter incertitudinem, ut si tenens dicat quòd totam terram non teneat, & juratores quæsiti cum sacramento vel sine dicant quòd nesciant: ut de itinere W. de Ralegh in comitatu North. si Wilhelmus de Camera. Item cadit assisa propter defectum naturæ vel sensus ipsius tenentis, ut si omninò audire vel loqui non possit, ut si sit surdus vel mutus naturaliter ita quòd omninò audire non possit neq; loqui, quod non est de eo qui tardè audit vel loquitur: ut de itinere de W. de Ralegh in comitatu North. assisa mortis antecessoris inter Radulphum Basset & Thomam de Pictesse. Si autem à casu venerit illa surditas, tunc non cadit assisa sed erit differenda quousq; status ipsius tenentis melioretur. Et quod dictum est de surdo & muto, dici poterit de furioso, secundùm quod gavisus fuerit aliquando dilucidis intervallis. Item cadit assisa propter continuationem seysinæ donatoris, verbi gratia. Pater dedit filio quandam terram & simul remanserunt in seysina, filius præmoritur vivente patre relicto hærede, si hæres petat per assisam, non valet propter seysinam patris continuatam, quàm corpore & animo retinuit: ut de ultimo itinere M. de P. in com̃ Suff. assisa mortis antecessoris, si Rogerus Battayl. Si autem pater præmoriatur, hæres ipsius obtinebit per assisam propter seysinam patris continuatam usq; ad mortem. Item cadit assisa ratione juris & æsneciæ, ut si frater petentis antenatus præmortuus filium reliquerit superstitem & de quo doceri possit quòd superstes sit per juratores cum sacramento vel sine. Si autem nihil horum doceri possit, vel si juratores dubitaverint utrum ita sit vel non, tunc procedet assisa

f. 274.

a petition precedes by a writ of naifty. Likewise the assise fall sometimes from uncertainty, as if the tenant should say that he does not hold the whole land, and the jurors when questioned with or without an oath should say that they do not know, as in the iter of William de Ralegh in the county of Northumberland, if William de Camera. Likewise the assise falls on account of a defect of nature or sense of the tenant himself, as if he is altogether unable to hear or to speak, as if he be deaf or dumb naturally so that he is altogether unable to hear or to speak, which is not the case with him who hears or speaks slowly, as in the iter of William de Ralegh in the county of Northumberland, an assise of mortdancester between Ralph Basset and Thomas de Pictesse. But if that deafness has come on from accident, then the assise does not fall, but is to be deferred until the condition of the tenant himself is ameliorated. And what is said of a deaf and dumb person, may be said of a madman, according as he has sometimes enjoyed lucid intervals. Likewise the assise falls on account of the continuance of the seysine of the donor, for example: A father gave to a son some land, and they remained together in seysine, the son predeceases his father and leaves an heir, if the heir claims by an assise, it is of no avail on account of the continued seysine of the father, which he retained both personally and mentally, as in the last iter of Martin de Pateshull in the county of Sussex, an assise of mortdancester, if Roger Battayl. But if the father predeceases, his son shall obtain by an assise on account of the seysine of his father continued to his death. Likewise an assise falls by reason of right and primogeniture, as if an elder-born brother of the claimant having predeceased him has left a son surviving, and concerning whom it can be proved that he is surviving by jurors with an oath or without. But if none of these things can be proved, or if the jurors have doubted whether it be so or not, then the assise shall

f. 274.

inter eos qui præsentes sunt. Item cadit assisa, si à tenente objiciatur quòd petens vel alius hæres propinquior alias movit ei litem de eadem terra, & quòd tunc remansit ei terra per judicium vel duellum vel magnam assisam, vel finem factum, recognitionem, quietam clamantiam, vel alio quocunq; modo qui probari possit per assisam captam in modum juratæ. Item cadit assisa propter ordinem brevium non observatum, ut si priùs implacitaverit petens ipsum tenentem per breve de recto vel de ingressu, ita quod visus petitus sit vel warantus vocatus: ut de itinere Wilhelmi de Ralegh in comitatu Buck. assisa mortis, si Richardus Avenel. Idem erit, si essonium intervenerit, ut de itinere Martini de Pateshull in comitatu Kanc. anno duodecimo, assisa mortis antecessoris, si Manasserus de Hastings. Item cadit assisa, si tenens teneat de ballivo domini regis, vel si chartam domini regis habuerit per quam dominus rex ei teneatur ad warantum & excambium, nisi petens docere possit quòd antecessor suus inde obiit seysitus post illius chartæ confectionem.

CAP. XIV.

1. Exceptio, si contra minorem, qui est infra ætatem, petatur per assisam mortis a majore, qui est plenæ ætatis.

Datur etiam exceptio tenenti propter minorem ætatem suam sive sint ibi plures tenentes sive unus. Et quandoq; major petit per assisam mortis antecessoris versus minorem, quandoq; minor contra majorem, quandoque minor contra minorem. Et sicut distinguuntur ætates & personæ, ita oportet distinguere teñta, utrum s. teñtum quod petitur per assisam teneatur in socagio, vel burgagio, vel per servitium militare. Item utrum ille qui tenet fuerit infrà ætatem, vel ille qui petit. Item videndum erit de quibus tenementis respondebit

f. 274 b.

proceed between those who are present. Likewise an assise falls, if it be objected by the tenant that the claimant or another next heir has at another time brought a suit against him concerning the same land, and that on that occasion the land remained to him through a judgment or a duel, or a great assise, or the levying of a fine, a recognition, a quit claim, or in some other way, which may be proved by an assise held after the manner of a jury. Likewise an assise falls on account of not observing the order of the writs, as if the claimant has impleaded the tenant by a writ of right or of entry, so that a view has been claimed or a warrantor called, as in the iter of William de Ralegh in the county of Buckingham, an assise of mortdancester, if Richard Avenel. The same will happen, if an essoin has intervened, as in the iter of Martin de Pateshull in the county of Kent in the twelfth year, an assise of mortdancester, if Manasser of Hastings. Likewise an assise falls, if the tenant holds of the bailiff of the lord the king, or if he have a charter of the lord the king by which the lord the king is bound to him to warrant and to compensate, unless the claimant can show that his ancestor died seysed thereof after the making of that charter.

CHAPTER XIV.

1. An exception, if a claim is made against a minor, who is under age, through an assise of mortdancester by a major, who is of full age.

An exception is also given to a tenant on account of his minor age, whether there are there several tenants or only one. And sometimes a major claims by an assise of mortdancester against a minor, sometimes a minor against a major, sometimes a minor against a minor. And as ages and persons are distinguished so we must distinguish the tenement, whether for instance the tenement which is claimed by an assise is held in socage or in burgage or by military service. Likewise whether he who holds it is under age, or he who claims it. Likewise we must see concerning what tenements he shall

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ante plenam ætatem, & de quibus non, & ad quæ brevia & ad quæ non.

2. Si minor contra minorem.

Si minor petat contra minorem per assisam mortis antecessoris & qui proximus ætati non fuerit, minor summonitus se essoniare non poterit contra minorem, non magis quàm contra majorem, si constiterit ipsum esse minorem, si autem non constiterit, allocatur quandoq; essonium quasi per ignorantiam, nisi sit qui causatur minorem ætatem, sed contra minorem qui petit in causa possessionis nunquam allocabitur essoniū factum à majore nec à minore. Sed cùm ante plenam ætatem viginti & unius anni peti possit burgagium & socagium contra majorem,[1] quæro an eodem modo possit contra minorem ante plenam ætatem viginti & unius anni in causa proprietatis & in causa possessionis? Non possit (ut videtur) de aliquo, de quo antecessor seysitus obiit ut de feodo: secus esset si ad terminum vitæ vel annorum, vel in custodia, vel in vadio per finem vel conventionem & hujusmodi. Cùm autem comparuerit, si constiterit ipsum esse minorem, non respondebit de aliquo tenemento in aliqua causa possessionis vel proprietatis, antequam fuerit plenæ ætatis, sive illud tenementum fuerit socagium, burgagium, vel feodum militare, licet diversæ sint ætates ad petendam seysinam antecessoris contra minorem antequam respondebit, secundùm quod tenementa sunt diversa, & secundùm quod causa fuerit possessionis vel proprietatis, quia ante plenam ætatem viginti & unius anni, potest hæres petere seysinam antecessoris sui in causa possessionis per assisam mortis antecessoris contra majorem. In causa verò proprietatis petere non potest major nec minor contra minorem per breve de recto, qualecunq; fuerit tenementum, antequam minor tenens

[1] "minorem," MS. Rawl. C. 160. "Sed cum" down to "hujusmodi" omitted, MS. Rawl. C. 159.

answer before he is of full age, and concerning what not so, and to what writs, and to what writs not so.

2. If a minor claims against a minor.

If a minor claims against a minor by an assise of mortdancester, and who is not very near to full age, the minor when summoned cannot essoin himself against the minor, no more than against a major, if it has been established that he is a minor, but if it has not been so established, an essoin is sometimes allowed as it were through ignorance, unless there be some one who alleges as an excuse his minority, but against a minor who claims in a cause of possession an essoin will never be allowed whether made by a major or a minor. But since before the full age of twenty-one years a burgage or a socage tenure can be claimed against a major, I question whether in the same way it can be claimed against a minor before the full age of twenty-one years in a cause of property and in a cause of possession. It can be claimed (as it seems) concerning any thing of which an ancestor died seysed as of fee; it would be otherwise if he held it for the term of his life or for a term of years or in guardianship or as a security through a fine or a convention and such like. But when he has appeared, if it has been established that he is a minor, he shall not answer concerning any tenement in any cause of possession or of property, before he be of full age, whether that tenement has been a socage or a burgage tenement, or a military fee, although there may be diverse ages to claim the seysine of an ancestor against a minor before he shall answer, according as the tenements may be diverse, and according as the cause may be one of property or of possession, because before the full age of twenty-one years an heir may claim the seysine of an ancestor in a cause of possession through an assise of mortdancester against a major. But in a cause of property neither a major nor a minor can claim against a minor by a writ of right, whatever may be the character of the tenement, before the minor tenant shall

plenam ætatem habuerit viginti & unius anni. Et cùm sic minor obtinuerit per assisam ante plenam ætatem in causa possessionis, non respondebit ad assisam in eadem causa possessionis, si ab eo peteretur per assisam, scilicet in burgagio, & socagio ante ætatem talium. In feodo verò militari non ante plenam ætatem respondebit, scilicet viginti & unius annorum[1] non magis quàm ei respondebitur. Si autem petat per assisam feodum militare, nec magis respondebit ad assisam in feodo militari ante plenam ætatem viginti & unius anni, quàm si peteretur per breve de recto in causa proprietatis. Item quòd minor petere non potest per assisam cum effectu antequam fuerit plenæ ætatis secundùm diversitatem tenementorum, hoc verum est si petat contra custodes, quia si ipse primâ facie habeat actionem, custos habebit contra eum exceptionem, scilicet quòd non antequam plenæ ætatis fuerit, & ita ante ætatem non respondebit. Si autem petat per assisam versus extraneas personas & versus capitalem dominum suum qui negaverit ipsum esse hæredem, bene potest petere quolibet tempore per assisam, cujuscunq; fuerit ætatis. Sed quicunq; sit qui petat versus eum & pater suus inde obierit seysitus ut de feodo, ante plenam ætatem non respondebit, secundùm quod tenementum fuerit tale vel tale, nec in causa possessionis non magis quàm in causa proprietatis. Item in assisa habenda est ratio prioritatis & posteritatis, secundùm quod supradictum est. Si autem capitalis dominus vel alius qui custodiam habuerit per ipsum aliquem feoffaverit de terra minoris dum fuerit infrà ætatem, & feoffatus per custodem moriatur relicto hærede infrà ætatem existente, cùm ad ætatem pervenerit primus hæres petat per assisam versus ultimum hæredem feoffati vel per aliud breve, quòd reddat tali qui plenæ ætatis est (ut dicitur) remanebit assisa quo-

f. 275.

[1] "scilicet viginti et unius annorum," omitted MS. Rawl. C. 160.

have the full age of twenty-one years. And when the minor shall have so prevailed through an assise before he is of full age in a cause of possession, he shall not answer to an assise in the same cause of possession, if it be claimed against him by an assise, to wit, in burgage and in socage tenure before the full age of such. But in a military fief he shall not answer before the full age, to wit, of twenty-one years, no more than he can demand an answer. But if he claims a military fief by an assise, he shall not answer to the assise any more in the case of a military fief before he is of the full age of twenty-one years, than if a claim were made by a writ of right in a cause of property. Likewise that a minor cannot claim by an assise with effect before he is of full age according to the diversity of tenements, this is true if he claims against guardians, because if he has at first sight an action, the guardian will have against him an exception, to wit, that he cannot bring an action before he is of full age, and so he shall not answer before that age. But if he claims by an assise against extraneous persons and against his chief lord who has denied that he is heir, he may well claim at any time by an assise, of whatever age he may be. But whoever he may be who claims against him and his father has died seysed thereof as of fee, he shall not answer before he is of full age, according as the tenement has been such or such, neither in a cause of possession any more than in a cause of property. Likewise in an assise regard is to be had to priority and posteriority, according to what has been said above. But if a chief lord, or another who has the wardship, has by himself enfeoffed any one with the land of a minor, whilst he was under age, and the person enfeoffed by the guardian dies having left an heir under age, should the first heir when he has come of age claim against the last heir of the feoffee by an assise or by another writ, that he should restore it to him who is of full age (as it is said), the assise shall be stayed until the

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usq, ultimus hæres fuerit plenæ ætatis secundùm genus tenementi. Si autem ambo fuerint plenæ ætatis & ambo petant versus custodem per assisam vel per aliud breve q reddat tali qui plenæ ætatis est (ut dicitur) ultimus hæres priùs obtinebit, & tunc demum cadit assisa primi hæredis versus custodem, & incipiet de novo competere versus ultimum hæredem qui per assisam obtinuit, & ille tunc vocet ad warantum capitalem dominum feoffatorem suum. Et cùm ille warantizaverit, tunc procedet assisa primi hæredis versus eum, & si per assisam obtinuerit hæres, tunc faciat warantus excambium suo feoffato. Item si capitalis dominus feoffaverit & moriatur hærede suo infrà ætatem existente & hæres vocatus fuerit ad warantum per eum, qui feoffatus fuit per capitalem dominum, remanebit placitum de warantia inter tenentem & hæredem domini capitalis usq, ad ætatem hæredis, sed capiatur assisa: ut de eodem itinere ejusdem M. anno eodem, assisa mortis antecessoris, si Eudo pater Walteri, quam terram Rogerus de Braham tenuit, qui vocavit ad warantum Rogerum le Bygod filium & hæredem com̃ Hugh[1] le Bygod, & qui tunc fuit infrà ætatem. Et ibi consideratum fuit quòd caperetur assisa non expectata ætate, & ita probatur in pluribus locis. Sed esto quòd feoffatus moriatur seysitus & hæres ejus fuerit infrà ætatem, ætas ejus expectabitur, quia antecessor suus obiit inde seysitus ut de feodo, & sic de pluribus dici poterit si terra sic data ad plures devenerit. Et quod suprà dicitur de capitali domino, dici poterit de hæredibus eorum qui moriuntur seysiti ut de feodo sed ad terminum, & ut de vadio & hujusmodi. Sed quid dicetur de disseysitore & intrusore qui moriuntur seysiti quasi de feodo propter patientiam vel negligentiam disseysiti. Si autem dominus capitalis præmoriatur

[1] "Hugonis," MS. Rawl. C. 160.

last heir has come to full age according to the kind of tenement. But if both should be of full age and both should claim against the guardian by an assise or by another writ that he should restore it to him who is of full age (as it is said), the last heir shall first prevail, and then at length the assise of the first heir against the guardian falls, and he shall begin anew to be entitled to an assise against the last heir who has prevailed by an assise, and the latter may then call to warrant him the chief lord his feoffor. And when he has warranted him, then the assise of the first heir shall proceed against him, and if the heir has prevailed by the assise, then let the warrantor make compensation to his own feoffee. Likewise if the chief lord has enfeoffed a person and he dies his heir being under age, and the heir has been called to warrant by him, who has been enfeoffed by the chief lord, the plea concerning the warranty between the tenant and the heir of the chief lord shall be stayed until the full age of the heir, but let the assise be held, as in the same iter of the same Martin in the same year, an assise of mortdancester, if Eudo the father of Walter, which land Roger de Braham held, who called to warranty Roger le Bygod the son and heir of earl Hugh le Bygod, and who was then under age. And there it was held that the assise should be taken without waiting for the full age [of Roger], and so it is approved in many places. But let it be that the feoffee dies seysed and his heir is under age, his full age shall be waited for, because his ancestor died seysed thereof as of fee, and so it may be said of several persons, if the land so given has passed to several persons. And what is said above of a chief lord, may be said of the heirs of those, who die seysed as of the fee but for a term, and as of a pledge and such like. But what shall be said of a disseysor and an intruder who die seysed as it were of the fee on account of the sufferance or negligence of the person disseysed. But if the chief lord predeceases, his heir being under age, the

hærede suo infrà ætatem existente, non propter hoc remanebit assisa in persona sua, scilicet hæredis, licet contra assisam respondere nō potest: ratio est ad hoc, quia antecessor suus nunquā seysitus fuit de tenemento quod warantizare debet in feodo. Et q ita sit, videri poterit in itinere M. de P. in coñ Suff. an. regis H. 12, assisa mortis antecessoris, si Rogerus de Gloc. Ad hoc facit in itinere ejusdē anno eodem in coñ Norff. Item si hæres capitalis domini in seysina fuerit & infrà ætatem & venerit assisa super eum immediatè, non remanebit assisa propter ætatem: ut de itinere M. de P. in coñ Kanc. anno regis H. decimo, assisa mortis antecessoris, si Emma mater Rogeri. Illud idem dici poterit de quolibet hærede qui fuerit infrà ætatem de omnibus de quibus antecessor suus non obiit seysitus ut de feodo, ubi autē ut de feodo, non respondebit ad assisam ante plenam ætatem in causa possessionis sicut hîc, sive illud tenementum fuerit socagium sive feodum militare, ut de itinere abbatis de Radinge & M. de P. in comitatu Leycester, assisa mortis antecessoris, si Walterus filius Wilhelmi. Et eodem modo dici poterit de burgagio, secundùm diversitatem burgagii, nec ad breve de recto in causa proprietatis non tenentur respondere infrà ætatem (ut videtur) antequam fuerint plenæ ætatis, scilicet viginti & unius anni. Cùm autem tales qui tenuerint in socagio vel burgagio, cùm fuerint plenæ ætatis (secundùm socagium & burgagium), donationes fecerint, quæritur an illas revocare possunt cùm ad majorem ætatem pervenerint, scilicet viginti & unius anni, ac si illas fecissent de feodo militari? dico quòd non in quibusdam locis, sicut videri poterit in itinere M. de P. in comitatu Warr̃ an. regni regis H. quinto, in fine rotuli.

f. 275 b.

assise shall not on that account be stayed in his person, to wit, of the heir, although he cannot answer to the assise: the reason for this is, that his ancestor was never seysed of the tenement, which he ought to warrant, in fee. And that it is so, may be seen in the iter of Martin de Pateshull in the county of Suffolk in the twelfth year of king Henry, an assise of mortdancester, if Roger of Gloucester. On this bears an assise in the iter of the same judge in the same year in the county of Norfolk. Likewise if the heir of a chief lord be in seysine and under age and an assise is brought against him immediately, the assise shall not be stayed on account of his age, as in the iter of Martin de Pateshull in the county of Kent in the tenth year of king Henry, an assise of mortdancester, if Emma the mother of Roger. The same thing may be said of any heir, who is under age, concerning all things whereof his ancestor did not die seysed as of fee, but when of fee, he shall not answer to the assise before he is of full age in a cause of possession as here, whether the tenement be a socage tenement or a military fief, as in the iter of the abbot of Reading and Martin de Pateshull in the county of Leicester, an assise of mortdancester, if Walter the son of William. And in the same way it may be said concerning a burgage tenement, according to the difference of the burgage tenure, nor are they bound to answer to a writ of right in a cause of property under age (as it seems) before they are of full age, to wit, twenty-one years. But if such persons who have held in socage or burgage tenure, when they are of full age according to socage or burgage tenure, have made donations, it is questioned whether they can recall them when they have arrived at majority, to wit, the age of twenty-one years, as if they had made donations of a military fief. I should say not in certain places, as may be seen in the iter of Martin de Pateshull in the county of Warwick in the fifth year of the reign of king Henry, at the end of the Roll. But

f. 275 b.

Hæc autem quæ dicta sunt locum habent in hærede masculo. De fœmina verò hærede & infrà ætatem existente non omninò sic. De quibus autem minor infrà ætatem respondere debeat dicetur pleniùs infrà, de exceptionibus.

3. Si minor contra majorem.

Si verò minor agat contra majorem, nec tunc locum habebit essonium contra minorem in persona majoris qui tenent,[1] nec si defaltam fecerit major, locum habebit resummonitio magis quàm essonium. In primo die capiatur assisa, & ideò, quia si præsens esset minor, nihil dicere posset major quare assisa remaneret. Et cùm minor per assisam recuperaverit ut de feodo, de jure & proprietate ante plenam ætatem non respondebit ad breve de recto nec majori nec minori, sicut nec de aliquo alio placito, ubi posset sine recuperatione exhæredari.

4. Si minor petat contra minorem, quod distinguendum de seysina mortui tenentis.

Si autem minor petat contra minorem per assisam, bene tenebit ibi assisa in persona minoris petentis. De minore autem qui est in seysina videndum est, qualiter adeptus est seysinam, utrum de facto suo proprio quòd disseysinam fecerit vel infrà ætatem sit feoffatus, de quibus infrà dicetur. Item si antecessor suus, cujus seysinam habuerit, obiit seysitus ut de feodo vel alio modo. Si autem ut de feodo, non respondebit ante ætatem, secundùm quod superiùs dicitur in principio, si major petat contra minorem. Si autem non in feodo, sed alio modo sicut in vadio, vel ad vitam, vel ad terminum, vel si minor inde feoffatus fuit: capietur assisa eodem die, sive venerit sive non, quia neq; essonium habet locum neq; resummonitio. Sed[2] qualiter & per quod breve sumoniri debeat placitum de warantia, cùm hæres domini capitalis ad ætatem

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[1] "tenet," MS. Rawl. C. 160.

[2] "Sed qualiter et per quod breve," down to "Teste, &c.," is the reading of MS. Rawl. C. 160, but is omitted in MS. Rawl. C. 159, and in MS. Crewe.

these things as stated above have a place in the case of a male heir. But in the case of a female heir and one under age it is not altogether so. But concerning what things a minor heir under age ought to answer will be stated more fully below, concerning exceptions.

3. If a minor claims against a major.

But if a minor proceeds against a major, neither will an essoin have place in the person of the major who is the tenant against the minor, nor if the major has made default will a resummons have place any more than an essoin, and on the first day let the assise be held, and for this reason, because if the minor were present the major could allege nothing wherefore the assise should be stayed. And when the minor has recovered by an assise as of fee, he shall not answer concerning the right and the property before his full age to a writ of right neither to a major nor to a minor, nor concerning any other plea where he might be without recovery put out of his inheritance.

4. If a minor claims against a minor, that a distinction is to be made concerning the seysine of the deceased tenant.

But if a minor claim against a minor by an assise, the assise will there hold good in the person of the minor claimant. But concerning the minor who is in seysine it is to be seen how he has obtained seysine, whether by his own act that he has effected a disseysine, or has been enfeoffed whilst under age, concerning which it will be explained below. Likewise if his ancestor, whose seysine he has, died seysed as of fee or in some other manner. But if as of fee, he will not answer before full age according to what is said above in the beginning, if a major claims against a minor. But if not in fee but in some other manner, as in pledge, or for life, or for a term, or if the minor has been enfeoffed therewith, the assise shall be held on the same day whether he has come or not, because neither an essoin has place nor a resummons. But how and by what writ the plea concerning warranty ought to be summoned, when the heir of the chief lord has come to

pervenerit videndum. Breve tale erit. Summoneas per bonos summonitores A. filium & hæredem B. qui plenæ ætatis est (ut dicitur) quòd sit &c. ad warantizandum C. tantum terræ cum pertinentiis in tali villa, quam D. de N. in curia nostra tali apud talem locum recuperavit versus eundem C. per assisam mortis antecessoris inde ibi inter eos captam. Et unde idem C. dum fuit in seysina de eadem terra, vocavit inde ad warantum prædictum A., & remansit placitum de warantia per judicium curiæ nostræ usq; ad ætatem prædicti A., quia priùs respondere non potuit ad warantiam. Teste, &c.

f. 276.

Cap. XV.

1. Si plures sint petentes et plures tenentes in assisa mortis antecessoris.

Cum autem plures sint tenentes in assisa mortis antecessoris & plures petentes, aut sunt omnes infrà ætatem vel quidam illorum, & tunc videndum si propter ætatem unius, sive fuerit petens sive tenens, debeat remanere assisa, ac si omnes essent infrà ætatem. Et tunc videndum utrum participes fuerint qui petunt vel qui tenent, vel extranei. Item si participes, utrum divisa sit hæreditas vel indivisa, & sive sit ibi unus hæres ex pluribus petentibus infrà ætatem vel plures vel omnes, non propter minorem ætatem petentium remanebit assisa, cùm hæreditas fuerit divisa, preterquam contra dominum capitalem, quia assisam dedicere non poterit, quod quidem non erit in causa proprietatis. Si autem tenens fuerit unus vel plures & omnes infrà ætatem, & teneant in communi & pro indiviso, remanebit assisa usque ad ætatem omnium, quia sunt quasi unus heres. Si autem teneant pro diviso & quilibet sciat partem suam, quilibet respondeat pro parte sua, sed ætas omnium ipsorum vel unius non erit ex-

full age, is to be seen. The writ will be of this kind: Summon by good summoners A. the son and heir of B., who is of full age (as is said), that he be present &c. to warrant for C. so much land with its appurtenances in such a vill, which D. of N. in such a court of ours at such a place recovered against the said C. by an assise of mortdancester there held thereon between them. And whereof the said C. whilst he was in seysine of the same land called the aforesaid A. to warrant, and the plea concerning the warranty was stayed by a judgment of our court until the coming of age of the aforesaid A., who could not previously have answered to the warranty. Witness, &c.

CHAPTER XV.

f. 276.

1. If there be several claimants and several tenants in an assise of the death of an ancestor.

But when there are several tenants in a cause of mortdancester and several claimants, they are either all under age or some of them, and then it is to be seen if on account of the age of one of them, whether he be a claimant or a tenant, the assise ought to be stayed as if they were all under age. And then it is to be seen whether those who claim or those who hold are parceners or extraneous. Likewise if they are parceners, whether the inheritance is divided or undivided, and whether there be there one heir out of several claimants under age or several or all, the assise shall not be stayed on account of the minority of the claimants, when the inheritance has been divided, except against the chief lord, because he cannot gainsay the assise, which will not be the case in a cause of property. But if the tenants have been one or several and all under age, and they hold in common and in an undivided estate, the assise shall be stayed until the full age of all, because they are as it were one heir. But if they hold in divided portions, and each knows his own portion, let each answer for his own portion, but the full age of all of them or of one is

pectanda, sive placitum fuerit super possessione vel super proprietate de recto: & quia sunt quasi unus heres ea ratione quòd unum jus habent, nullus sine alio poterit respondere nec debet, si teneant simul & pro indiviso. Si autem plures sint filie & hæredes & petant per assisam versus capitalem dominum, illæ quæ sunt plene ætatis obtinebunt: ille verò que sunt infra ætatem in custodia remanebunt, & successivè cùm ad etatem pervenerint habeant partem suam per breve de proparte & non per assisam, versus extraneos autem si petierint, licet infrà etatem fuerint, procedet assisa non obstante etate. Sunt etiam plures exceptiones & responsiones contra assisam & que sunt communes ad omnia placita, de quibus infrà pleniùs dicetur. Si autem contingat quòd plures sunt participes qui teneant & plures qui petant, & secundùm quod res que petitur teneatur pro indiviso in communi vel pro diviso, si aliquis eorum in brevi non fuerit nominatus sive petens fuerit sive tenens, quid agendum sit in tali casu infrà dicetur pleniùs, de exceptionibus secundùm quod hereditas divisa fuerit inter participes. Et in quo casu, non oportet in brevi nominare nisi tantùm illos qui tenent rem petitam, licet sine participibus suis respondere non teneantur, & qui per aliud breve summonendi sunt ad respondendum & sine quibus &c. Et sic dici poterit de pluribus participibus, si unus petat, quod sine aliis ei respondere[1] non debeat. Sed in hoc casu, nisi omnes qui sequi debent in brevi nominentur, cadit breve & assisa. Et eodem modo si plures tenentes sint qui teneant pro indiviso, nisi omnes nominentur, cadit breve omninò. Sed quid si cùm omnes nominentur in brevi cùm teneant vel petant in

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[1] "responderi," MS. Rawl. C. 160.

not to be waited for, whether the plea be about the possession or about the property concerning the right, and because they are all as it were one heir, by reason that they have one right, none can answer without the other, nor ought he to answer, if they are tenants together in an undivided estate. But if there are several daughters and heiresses and they claim by an assise against the chief lord, those who are of full age shall prevail, but those who are under age shall remain in wardship, and let them have their part successively when they have come of age by a writ of partition and not by an assise; but if they have claimed against extraneous persons, although they may be under age, the assise shall proceed notwithstanding their age. There are also several exceptions and answers against an assise, and which are common to all pleas, concerning which it will be explained more fully below. But if it happens that there are several parceners who hold and several who claim, and according as the estate which is claimed is held undivided in common, or is divisible, if any of them have been named in the writ whether he be a claimant or a tenant, what is to be done in such a case will be explained more fully in treating of exceptions, according as the inheritance has been divided amongst the parceners. And in which case it is not incumbent to name in the writ any but those who hold the estate claimed, although they may not be bound to answer without their co-parceners, and who are to be summoned by another writ to answer, and without whom, &c. And so it may be said of several co-parceners, if one claims, that he ought not to answer him without the others. But in his case, unless all who follow are named in the writ, the writ and the assise falls. And in the same manner if there are several tenants who hold an undivided estate, unless all are named, the writ falls altogether. But what if, when all are named in the writ, since they hold or claim in common, one should die,

communi, unus moriatur licet pars morientis per jus accrescendi accrescere debeat superstitibus cùm obtinuerint, tamen cadit breve propter partem morientis quàm tenuit cum aliis in communi, & cùm pars cujuslibet ipsorum per hoc quasi ex nova successione augmentetur, alia actione & nova opus erit. Breve autem de summonendo participe inferius.

f. 276 b.

Cap. XVI.

1. De exceptionibus extraneis, ut de exceptione feloniæ.

Dictum est supra de exceptionibus quæ proveniunt ex articulis brevis, ubi capitur assisa in modum assisæ: nunc autem videndum de exceptionibus quæ à casu proveniunt & aliunde, perimit autem omninò assisam mortis antecessoris objectio feloniæ, ut si pater, mater, vel alius antecessor, de morte cujus locum haberet assisa, feloniam fecerit, quia tales nihil transmittere possunt ad hæredes suos, si fuerit convicta. Forisfaciunt enim suis hæredibus quicquid eis acciderit tempore feloniæ, tam jus quàm seysinam simul, vel etiam jus merum per se, cùm acciderit sine assisa.[1] Item non solum quicquid ei accidit, sed quicquid accidere potuit ab aliquo antecessore, sicut videri poterit manifestè. Esto q filius & hæres in vita patris sui feloniam fecerit & obierit in vita patris, licet videatur prima facie q alii post eum hæredes patris communis propinqui incipiant post mortem suam esse propinquiores, tum quia nihil juris vel seysinæ descendere potuit feloni vivente patre communi, tum quia non expectavit q esset hæres, videtur q tales incipiant esse hæredes propinquiores, q est verum. Sed si contingat filium felonis vel alium hæredem de morte avi, vel

Britton, iii. ch. xxii. § 1.

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[1] "sine seisina," MS. Rawl. C. 160, and Crewe and Reg. 9, E. xv.

although the portion of the deceased by the right of accretion ought to accrue to the survivors, when they have prevailed, nevertheless the writ falls on account of the portion of the deceased, which he held in common with the others, and since the portion of each is augmented by this as it were from a new succession, there will be need of another and a fresh action. But a writ for summoning a co-parcener will be given below.

Chapter XVI.

f. 276 b.

1. Of extraneous exceptions, as of the exception of felony.

We have spoken above of exceptions which arise on the articles of the writ when the assise is held in the manner of an assise. Now indeed we must see concerning exceptions which arise casually and from without, but an objection of felony puts an end to an assise of mortdancester, as if a father, or mother, or other ancestor, concerning whose death an assise would have place, has committed a felony, because such persons cannot transmit anything to their heirs, if felony has been proved against them. For they forfeit for their heirs whatever belonged to them at the time of the felony, as well the right and the seysine together, or even the mere right by itself, when it belonged to them without the seysine. Likewise not only whatever did belong to them, but whatever might belong to them from any ancestor, as may be clearly seen. Let it be that a son and heir has in the lifetime of his father committed a felony and has died in the lifetime of his father, although it might seem at first sight that others who after him are near heirs of a common father commence to be after his death next heirs, as well because no right or seysine could descend to a felon whilst the common father was alive, as well because he did not wait to become heir, it seems that such others commence to be next heirs, which is true. But if it happens that the son of the felon or another heir upon the death of the

fratrem felonis de morte patris communis petere, cùm felo liberos habuerit, vel si patrem supervixerit, cùm nullus hæredum istorum poterit esse propinquior hæres nisi ratione juris meri ad ipsum descēdentis, sive petat per assisam mortis antecessoris, sive per breve de recto, cadit ab utroq̧, cùm sic fieri debeat computatio descensus juris meri ab antecessore saltem.[1] Et unde talis seysitus fuit ut de feodo & jure, & de tali descendit vel descendere debuit tali præmortuo, s. qui feloniam commisit, quod esse non poterit. Et unde si hæres qui feloniam fecerit in vita patris vel alterius antecessoris relictis liberis moriatur vel post, cadit omninò assisa in persona aliorum hæredum. Sed contra videtur: ut de itinere W. de Ralegh in com̄ Kanc., assisa mortis antecessoris, si Adhelolphus,[2] ubi dicitur q̧ felonia antecessoris non impedit seysinam hæredis nec successioñ. Sed hoc est speciale in com̄ Kanc. de tenementis, quæ tenentur in gavelkynd,[3] si ille qui feloniā fecerit judicium sustinuerit, quod secus est alibi in casu supradicto: ut de ultimo itinere M. de P. in com̄ Kanc., assisa mortis antecessoris, si H. filius Yaonis[4] de tenemento in Stronby, pręedictus Henricus filius Wilhelmi nomine, qui forisfecit terram, & unde fuit in seysina, quia falsavit sigillum dñi M., & sorores tulerunt assisam de morte antecessoris, s. patris com̄unis.

2. De diversis casibus.

Alius casus. Quidam petiit teñtum quoddam p̧ assisam mortis antecessoris de morte avunculi sui, responsum fuit ei ex parte adversa q̧ ipse petere non potuit, quia ipse avunculus suus habuit quendam fratrem superstitem, qui fuit hæres propinquior. Et ipse econtrario replicando respondit, q̧ ipse frater avunculi sui

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[1] "antecessore. Scilicet, et unde," MS. Rawl. C. 160 and Crewe and Reg. 9, E. xv.

[2] "Adelophus," MS. Rawl. C. 160.

[3] "gavelykind," MS. *id.*

[4] "filius Yuonis," MS. *id.*

grandfather, or a brother of the felon upon the death of the common father claims, when the felon has sons, or if he has survived his father, since none of those heirs could be next heir except in respect of the mere right descending to himself, whether he claims by an assise of mortdancester, or by a writ of right, he falls from each, since the computation of the descent of the mere right ought to be made from his ancestor, to wit, "and whereof such a person was seysed as of fee and of right, and it descends from so-and-so or ought to descend from so-and-so who is predeceased, to wit, who has committed the felony," which cannot be. And hence if the heir who has committed the felony in the lifetime of the father or other ancestor or after it, should die leaving children, the assise falls altogether in the person of the other heirs. But it seems to the contrary, as in an iter of William de Ralegh in the county of Kent, an assise of the death of an ancestor, if Adhelolphus, where it is said that the felony of an ancestor does not impede the seysine nor the succession of an heir. But this is special in the county of Kent concerning tenements which are held in gavelkind, if he who has committed the felony has suffered judgment, which is otherwise elsewhere in the case above mentioned, as in the last iter of Martin de Pateshull in the county of Kent, an assise of mortdancester, if Henry the son of Yao, concerning a tenement in Stronby, the aforesaid Henry the son of William by name, who forfeited a land, and of which he was in seysine, because he forged the seal of Lord M., and his sisters brought an assise of mortdancester on the death of their common father.

2. Concerning divers cases.

Another case. A certain person claimed a certain tenement by an assise of mortdancester on the death of his uncle, it was answered to him on the adverse side that he could not claim, because his uncle had a certain brother who was his next heir. And he on the contrary in his replication answered, that the brother of his uncle

ita fuit mente alienatus q̧ quendam hominē interfecit, ita q̧ fuit ppetuæ prisonæ deputatus. Et unde judiciū petitū fuit ex parte adversa, si in vita avūculi possit petere p assisam, judiciū positum fuit in respectum f. 277. corā rege, ubi nihil actum fuit, quia fortè mulier non fuit prosecuta: ut de itinere M. de Patesh. in com̃ Eborum āno regis H. xii., assisa mortis anteeessoris, si Odo filius Thorsin.[1] Item alius casus. Frater postnatus petiit terram per assisam mortis versus fratrem antenatum de seysina fratris medii, quia frater antenatus non potuit esse hæres & dominus, licet hæres propinquior, quia non potuit cum eo tenementum remanere ꝓpter homagium: ut de itinere episcopi Dunelm̃ & M. de P. in com̃ Eborum anno regis H. 3, assisa mortis, si Rogerus de Amundevil,[2] ubi dicitur q̧ assisa non jacet, sed habet locum breve de recto. Et notandū q̧ fratri antenato competit assisa mortis antecessoris versus extraneas personas & non conjunctas sive ipse (quicunq̧ fuerit in seysina) feoffator extiterit sive aliquis antecessor communis de quo ei descendit hæreditas, non obstāte eo q̧ ipse homagium ceperit vel antecessor com̃unis cujus hæres ipse fuerit, & ipse semper habebit primam seysinam, quicunq̧ fuerit in seysina, conjuncta persona vel alius, dum tamen si conjuncta persona, tunc competit ei breve de recto, si extranea, assisa mortis antecessoris. Nec valet exceptio si dicatur quòd ipse non possit esse hæres & dominus, quia nulli cōpetit assisa mortis antecessoris nisi primogenito, nec breve de recto, quia ille semper habet majus jus. Sed cùm ipse seysinam habuerit, tunc

[1] "filius Thorsini," MS. Rawl. C. 160.

[2] "Amundevyl," MS. *id.*

was so affected by mental alienation that he killed a man, so that he was consigned to perpetual imprisonment. And hence judgment was sought by the adverse party, if he could claim by an assise in the lifetime of his uncle, the judgment was placed by reference before the king, where nothing was done, because perchance the woman did not follow up the prosecution, as in the iter of Martin de Pateshull in the county of York in the twelfth year of king Henry, an assise of the death of an ancestor, if Odo the son of Thorsin. Likewise another case. An after-born brother claimed land by an assise of mortdancester against an elder-born brother from the seysine of an intermediate brother, because the elder-born brother could not be both heir and lord, although he was the next heir, because the tenement could not stay with him on account of the homage, as in the iter of the bishop of Durham and Martin de Pateshull in the county of York in the third year of the reign of king Henry, an assise of mortdancester, if Roger de Amundevil, where it is said that an assise does not lie, but a writ of right has place. And it is to be noted that an elder-born brother is entitled to an assise of the death of an ancestor against persons who are extraneous and not relations, whether he himself (whoever was in seysine) has been the feoffor or some common ancestor from whom the inheritance descends, notwithstanding the fact that he himself has received the homage or the common ancestor whose heir he is, and he shall always have the first seysine, whoever may have been in seysine, a relation or another person, provided that if it be a relation, then he is entitled to a writ of right, but if a stranger in blood, then to an assise of mortdancester. Nor does the exception avail, if it be said that he cannot be heir and lord, because no person is entitled to an assise of mortdancester except the firstborn son, nor to a writ of right, because he has always the greater right. But when he has the seysine, then in the first place a

f. 277.

primò locum habebit versus eum breve de recto pro hærede propinquiore filio vel filia, fratre vel sorore, & si excipiat ꝗ ꝑpinquior hæres sit ꝑpter jus merum, replicari poterit e contrario ab hærede suo ꝑpinquiore, ꝗ ipse non potest esse hæres & dominus ꝑpter homagiū. Si autem nullum homagium intervenerit, ut si filio primogenito concedatur tenementum ab antecessore com̄uni ad se sustentandum vel ꝑ servitio sive homagio, aliud erit. Item eodem modo si hæres & filius primogenitus sequi voluerit versus dominum capitalem vel extraneum cùm fuerit in seysina: alii hæredes nunquam actionem habebunt in vita primogeniti, quia ille majus jus habet &c. Et notandum ꝗ cùm de manu sua & seysina semel fiat descensus ad propinquiores tunc existentes, nunquam propter hæredem aliquem magis propinquum supervenientem aufertur. Item casus.[1] Soror petit per assisam mortis antecessoris versus nepotem filium sororis suæ de morte sororis, qui respondet ad assisam ꝗ fuit filius & hæres legitimus matris suæ sororis petentis per assisam, & cui fuit responsum quòd hæres esse non potuit quia pater suus fuit villanus, & qui[2] hoc spectavit ad jus, non jacuit assisa mortis antecessoris: ut de itinere M. de P. in com̄ Linc. an̄o regis H. x., assisa mortis, si Agnes filia Eliæ de Beningwoorth. Sed quare non potuit inquiri per assisam in modum juratæ captam utrum talis esset vel non, sicut de bastardo, licet de statu alicujus post mortem suam agi non possit, bene potuit de hoc fieri inquisitio: ut de itinere ejusdem M. an̄o regis H. x., assisa mortis antecessoris, si W. de Carl., & hoc sine alia ꝑbatione. Item casus. Mulieri petenti ꝑ assisam

[1] "Item casus," omitted MS. Rawl. C. 160.

[2] "et quia," MS. Rawl. C. 160.

writ of right shall have place against him on behalf of the next heir, a son or a daughter, a brother or a sister, and if he shall except that he is the next heir on account of the absolute right, it may be replied to him adversely by his next heir, that he cannot be both heir and lord on account of the homage. But if no homage has intervened, as if a tenement has been granted to a firstborn son by a common ancestor to support himself or for a service or homage, it will be another thing. Likewise in the same manner, if an heir and firstborn son wishes to do suit to the chief lord or a stranger in blood, when he is in seysine, the other heirs shall never have an action in the lifetime of the elder-born, because he has the greater right, &c. And it is to be noted that, when from his hand and seysine there is once a descent to next heirs then existing, it is never taken away on account of some more near heir supervening. Likewise a case. A sister claims by an assise of mortdancester against a nephew the son of her sister upon the death of the sister, who answers to the assise that he is the son and lawful heir of his mother, the sister of the claimant by the assise, and to whom it was answered that he could not be heir because his father was a villein, and because this had regard to his right, an assise of mortdancester did not lie, as in the iter of Martin de Pateshull in the county of Lincoln in the tenth year of king Henry, an assise of mortdancester, if Agnes the daughter of Elias of Beningwoorth. But wherefore could not an inquisition be made by an assise held after the manner of a jury whether he was such or not, as concerning a bastard, although proceedings cannot be had concerning the status of any one after his death, concerning this an inquisition could have been properly made, as in the iter of the same Martin in the tenth year of king Henry, an assise of the death of an ancestor, if William of Carlisle, and this without any other proof. Likewise a case. To a woman claiming by an assise it is objected

objicit q nepotes habet ex sorore, qui tantū juris habent quantum ipsa petens, replicatum fuit ex parte petentis q prædicta soror desponsata fuit cuidam villano, et ita q pueri villani sunt, si de hoc constiterit p assisam in modum juratæ captam vel confessionem puerorum, remanebit assisa: ut de ultimo itinere W. de Ralegh in com̃ Buck., assisa mortis, si Henricus Russel. Item alius casus.[1] Petenti p assisam mortis objectum fuit q pater ejus villanus fuit, ad q fuit à petente replicatum q liber fuit, quia franchiatus est,[2] q terra quā petiit descendit ei ex parte matris quæ libera fuit, positum fuit judiciū apud W.[3] & ibi concordati sunt: ut de ultimo itinere M. de P. in com̃ Linc., assisa mortis, si Leonata de tenemento in Weston. Si quis se cognoverit in judicio semel ad villanum, semper in omni casu pro villano judicabitur: ut de itinere M de P. de loquela, quæ fuit ad judicium in diversis com̃ anno regis H. 3. in com̃ Dors. de Hamelino filio Radulphi.

f. 277 b.

3. Quod si antenatus fuerit in partibus transmarinis et juratores dubitaverint utrum mortuus vel vivens fuerit, fiat minori seysina sub conditione.

Petenti per assisam objectum fuit q habuit fratrem in partibus transmarinis antenatū, juratores dubitant utrum mortuus sit vel non, conceditur petenti seysina sub tali conditione, q si redierit frater antenatus q sine placito habeat seysinam suam: ut de itinere W. de Ralegh in com̃ Buck., assisa mortis, si Richardus[4] Faber. Sed esto q frater postnatus moriatur antequam antenatus redierit (hærede infrà ætatem existente), quæro an expectanda sit ætas propter factum justiciariorum. Eodem modo, si per dominum capitalem habuerit soror seysinam hæreditatis ubi nihil scitur de

[1] "Item alius casus," omitted MS. Rawl. C. 160.

[2] "quia franchiatus, et quia "terra," MS. Rawl. C. 160.

[3] Westm̃. MS. Rawl. C. 160. et Reg. 9, E. xv.

[4] "Robertus," MS. Rawl. C. 160.

that she has nephews out of a sister, who have as much right as the claimant herself, it was replied on the part of the claimant that the aforesaid sister was espoused to a certain villein, and therefore that the children are villeins, if this has been ascertained by an assise held after the manner of a jury or by the confession of the children, the assise will be stayed, as in the last iter of William de Ralegh in the county of Bucks, an assise of mortdancester, if Henry Russel. Likewise another case. To a claimant by an assise it was objected that his father was a villein, to which it was replied by the claimant that he was free, because he was enfranchised, that the land which he claims descends to him from the side of his mother who was free, the judgment was held at Westminster, and there they came to an accord; as in the last iter of Martin de Pateshull in the county of Lincoln, an assise of mortdancester, if Leonata concerning a tenement in Weston. If a person has once admitted himself in a judgment to be a villein, he will be adjudged in every case to be a villein, as in the iter of Martin de Pateshull concerning the trial which was brought into court in different counties in the third year of king Henry, in the county of Dorset, concerning Hamelin the son of Ralph.

f. 277 b.

3. But if the elder-born is beyond the sea, and the jurors have doubted whether he be alive or dead, let conditional seysine be granted to the minor.

To a claimant by an assise it was objected that he had an elder-born brother in parts beyond the sea, the jurors doubt whether he is dead or not, the seysine is allowed to the claimant under a condition, that if the elder-born brother should return, he shall have his seysine without a plea, as in the iter of William de Ralegh in the county of Bucks, an assise of mortdancester, if Richard Faber. But let it be, that the after-born brother dies before the elder-born has returned (there existing an heir under age), I ask whether the full age of the heir is to be waited for on account of the act of the justiciaries. In the same manner, if through the chief lord a sister has had seysine of an inheritance, where nothing is known of a brother

fratre utrum vivus sit an mortuus, & ipsa seysita moriatur (hærede infrà ætatem existente) si frater redierit, quæro an sit ætas expectanda, cùm jam constiterit (sicut in casu superiore) q̧ antecessores talium propinquiores hæredes[1] non fuerint antecessorum præcedentiū. Et revera expectanda erit ætas in persona eorum, cum ipsorum antecessores seysiti obierint quasi de feodo. Sed contrarium coram rege & consilio suo apud West. anno regis H. 13. de hæredibus Johannis de Munmew, q̧ ætas non expectabitur si justior hæres comparuerit, sed hoc non fuit de jure sed de consilio curiæ & ex concessione antecessoris illius minoris.

Cap. XVII.

1. Quando assisa mortis antecessoris vertitur in juratam, et tenet breve assisæ, et cadit causa donationis in assisam.

Britton iii. ch. xxiii. § 1.

Vertitur assisa mortis antecessoris multotiens in juratam multis de causis, & eodem modo sicut assisa novæ disseysinæ, secundùm q̧ superiùs dictum est. Quandoq̧ per modum donationis secundùm q̧ poterit casus poni, & ubi per modum donationis fœmina præfertur masculo in successione, verbi gratia. A. dedit in maritagium cum B. filia sua quandam terram cuidam C. & hæredibus ipsorum communibus de ipsis duobus exeuntibus, B. habuit quandam filiā ex primo viro D. nomine, & mortuo primo viro postea nupsit alteri, de quo habuit quēdā filiū E. nōine, mortua B. & D. filia de primo viro in seysina existente, arramavit E. assisam mortis super eandem D. Ex parte cujus responsum fuit, q̧ prædictus E. nihil juris inde clamare potuit, quia terra illa data fuit in maritagium C. patri suo cum B. matre sua & hæredibus de ipsis duobus exeuntibus, responsum fuit ex adverso, quòd

[1] "hæredes talium," MS. Rawl. C. 160.

whether he is alive or dead, and she dies seysed (her heir being under age) if the brother has returned, I ask whether the full age of the heir is to be waited for, when it has been already ascertained (as in the former case) that the ancestors of such persons have not been next heirs of the ancestors preceding them. And in truth the full age will have to be expected in the person of them, as their ancestor died seysed as of fee. But the contrary was adjudged before the king and his council at Westminster in the thirteenth year of king Henry concerning the heirs of John de Munmew, that the full age should not be waited for, if a more lawful heir has appeared, but this was not of right, but of the court's decision and upon the concession of an ancestor of that minor.

CHAPTER XVII.

1. When an assise of mortdancester is turned into a jury, and the writ of assise holds good, and the cause of the donation falls into the assise.

An assise of mortdancester is on many occasions turned into a jury for many causes and in the same manner as an assise of novel disseysine, according to what has been said above. Sometimes through the mode of donation according as the case may be put, and where through the mode of donation a female is preferred to a male in the succession, for example. A. gave as a marriage portion with his daughter B. a certain land to a certain C. and to their common heirs sprung from them both. B. had a daughter by her first husband D. by name, and her first husband having died she afterwards married another, by whom she had a certain son E. by name. Upon the death of B. and upon D. the daughter by the first husband being in seysine, E. instituted an assise of mortdancester against the said D. Upon whose part it was answered that the aforesaid E. could claim no right therein, because that land was given as a marriage portion to C. her father with B. her mother and to the heirs springing from them both; it was replied on the opposite side, that it was given

alio modo datum fuit in maritagium cum ipsa B. matre communi & hæredibus de ipsa B. exeuntibus. Quo casu, quia fuerint frater & soror de una eademq; matre quamvis diverso patre, consideratum fuit ultimo itinere M. de P. in com̃ Suff. quòd assisa non jacuit inter eos sed quòd fieret inquisitio per patriam, & non p assisam de modo donationis: assisa mortis antecessoris, si Philippa de Cokfend matre Roberti.[1]

f. 278.

2. Si bastardia cadit in assisam.

Cadit etiam in assisam bastardia, per quod vertitur assisa in juratam, ut si frater antenatus tulerit assisam super fratrem postnatum de altero viro, vel e converso de morte matris ipsorum com̃unis, & respondeatur ab antenato q ipse sit primogenitus matris ipsorum, quamvis ab altero viro, & replicetur à postnato q ipse hæres esse non possit, quia pater suus matrem ipsorum com̃unem nunquam desponsavit, hoc per assisam in modum juratæ de consensu utriusq; partis captam declarabitur, ut de itinere M. de P. in com̃ Salop.

3. Quæstio de custodia, utrum tenementum, de quo assisa arramatur, teneatur in socagio vel per servitium militare.

Item vertitur assisa in juratam, si quis assisam arramaverit versus dominum suum, & ipse respondeat q nihil clamat nisi custodiam, & replicetur contra eum q custodia ad ipsum non pertineat, eo q tenementum illud tenetur in socagio. Ad q si dominus respondeat, q ipse & antecessores sui priùs inde custodiam habuerunt, super utroq; casu fiet inquisitio per assisam in modum juratæ, scilicet si terra illa sit socagium vel non, & si sit socagium, tunc de seysina talis & antecessorum suorum.

4. Exceptio venditionis.

Item vertitur assisa in juratam propter exceptionem venditionis, ut si quis petat per assisam mortis, & excipiatur q petens habuit fratrem antenatum, qui ha-

[1] "Philippa de Cokesend mater Roberti," MS. Rawl. C. 160.

in another manner as a marriage portion with B. their common mother and to the heirs springing from her body. In which case, because they were brother and sister from the same mother, though by a different father, it was held in the last iter of Martin de Pateshull in the county of Suffolk that an assise did not lie between them, but that an inquisition should be made by the country and not by an assise concerning the mode of donation. An assise of mortdancester, if Philippa de Cokfend, the mother of Robert.

f. 278.

2. If bastardy falls into an assise.

Bastardy also falls into an assise, through which the assise is turned into a jury, as if an elder-born brother has brought an assise against a younger-born brother by another husband, or conversely, concerning the death of the common mother of them both, and it be answered by the elder-born that he is the firstborn of their mother, although by another husband, and it be replied by the after-born that he cannot be the heir because his father did not espouse their common mother, this shall be declared by an assise held after the manner of a jury with the consent of each party, as in the iter of Martin de Pateshull in the county of Salop.

3. A question concerning wardship, whether the tenement, concerning which an assise is instituted, is held in socage or in military tenure.

Likewise an assise is turned into a jury if any one has instituted an assise against his lord, and the latter answers that he claims nothing but the wardship, and it be replied to him that the wardship does not belong to him, because the tenement is in socage. To which if the lord should answer that he and his ancestors have previously had the wardship thereof, an inquisition shall be made upon each case, by an assise after the manner of a jury, to wit, if that land be socage or not, and if it be socage, then concerning the seysine of such person and of his ancestors.

4. An exception of a sale.

Likewise an assise is turned into a jury on account of an exception of a sale, as if any one claims by an assise of mortdancester, and it be excepted that the claimant

Britton iii. ch. xxiii. § 4.

bitus fuit pro hærede & seysitus de eadem terra, & illam postmodum vendidit ipsi tenenti: ut de ultimo itinere M. de P. in com̃ Suff., assisa mortis antecessoris, si Walter9 Curteys. Si autem fiat replicatio à petente, q talis qui donationem fecisse debuit nunquam fuit inde in seysina de eadem terra, vel si fuit in seysina & donationem fecit, ipse donatorius nunquam seysinam habuit in vita donatoris, vel quid tale. Item si antecessor recognoverit vel remiserit & quietum clamaverit. Item si pueri illius, qui dicit se tenere per legem Angliæ, convicti fuerint ad bastardos. Itē si quæstio ætatis, quæstio status, conventio sive convictio, finis factus, res judicata, vel quid tale quæ ꝑveniūt extra assisā & fuerit dissētio inter partes, ubi tenens dicit unum & petens contrariū, de consensu partium vertitur assisa in juratam, & sic terminatur negotium & sufficit exempli causa. Item vertitur assisa mortis antecessoris quandoq, in juratam ꝑpter partum suppositum, ut si cùm verus heres fuerit in possessione, partus suppositus, scilicet aliquis vel aliqua, qui se fecerint hæredem alicujus cū non sint, portaverint assisam super verū herede. Eodem modo ꝑpter partum adulterinum, ut si dum maritus fuerit in remotis agens, vel tali infirmitate detentus q generare non possit, sit aliquis qui habeat accessum ad uxorem de quo pregnās extiterit, si maritus talem partum statim amoverit cùm æditus[1] fuerit & illū deadvocaverit, ex hoc nascetur vero hæredi exceptio contra assisam. Si autē talem deadvocaverit,[2] & aliqua ꝑ eo faciat presumptio q suus

Britton *ib.* § 5.

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[1] "editus," M.S. Rawl. C. 160, and Reg., 9 E. xv.

[2] "advocaviret," M.S. Rawl. C 160, and Crewe and Reg., 9 E. xv.

had an elder-born brother who was held to be heir and was seysed of that land and afterwards sold it to the tenant, as in the last iter of Martin de Pateshull in the county of Suffolk, an assise of mortdancester, if Walter Curteys. But if a replication be made by the claimant, that he who ought to have made the donation never was in seysine of that land, or if he was in seysine and made a donation thereof, the donatory never had seysine in the lifetime of the donor, or something of like kind. Likewise if the ancestor has acknowledged it or surrendered it and quit-claimed it. Likewise if the sons of him, who says that he holds it by the law of England, have been proved to be bastards. Likewise if there arises a question of age, a question of status, a convention or a conviction, a fine levied or a judgment pronounced or something of like kind which are forthcoming outside the assise, and there has been dissension between the parties, when the tenant says one thing and the claimant says another, with the consent of the parties the assise is turned into a jury, and so the business is settled, and it is sufficient by way of example. Likewise an assise of mortdancester is turned sometimes into a jury on account of a supposititious child, as if when the true heir is in possession, a supposititious offspring, to wit, some boy or some girl, who has made himself or herself out to be the heir of some one, when he or she is not so, has brought an assise against the true heir. In the same manner on account of an adulterous offspring, as if whilst the husband has been absent transacting business in remote parts, or detained by such an infirmity that he could not beget offspring, supposing there is some one who has had access to his wife by whom she has become pregnant, if the husband has removed such offspring immediately after he has been born, and has disavowed him, there will arise for the true heir an exception against the assise. But if he has avowed such offspring, and some presumption makes in its favour that it may possibly be his off-

esse possit, licet revera non sit, ut si simul extiterint, talis ꝓ hærede judicabitur, licet nō sit. Si autē advocatio & confessio suæ naturæ convenire non possit, hoc est si ꝑ unū annū vel biennium absens fuerit & reversus parvulum invenerit ex uxore, vel revera castratus fuerit vel ita infirmus, quòd generare non possit, licet talem advocaverit, tamen veritas præferri debet confessioni quæ naturæ non convenit nec rationi, licet quidam dicunt quòd locum habere debeat breve de recto, quod verum est secundùm quosdam.

f. 278 b.

Cap. XVIII.

1. Inter quas personas non jacet assisa mortis antecessoris.

Dictum est supra inter quas ꝑsonas jacet assisa mortis antecessoris & de morte quarum : nunc autem dicendum est inter quas non jacet, ne cōtingat quòd per assisam non terminetur proprietas, quæ locum non habet nisi tantùm in causa possessionis. Et sciendum ꝙ locum non habet inter conjunctas ꝑsonas sicut cohæredes sive sint participes, i. hæreditatis capaces de aliqua hæreditate descendēte ab aliquo com̄uni antecessore, sive non capaces. Quo casu, si capaces sint cohæredes, ut si hæreditas partibilis sit ratione plurium ꝑsonarum sicut filiarum, quæ sunt quasi unus hæres, vel ratione ipsiùs hæreditatis quæ in se partibilis est, locū non habebit assisa sed breve de proparte. Et si assisa impetretur, cadit opposita exceptione juris meri, cū quilibet ipsorum sit hæres ꝓpinquior quantum ad partem suam, respectu eorum qui sunt remotiores in alio gradu. Si autem plures sint cohæredes justi & ꝓpinqui quoad seysinam, omnes tamen non sunt participes vel capaces, sed unus eorum propter privilegium quod habet (ut superius dictum est), & cui jus merum descendit, aliis præfertur. Et in quo casu locum non habebit assisa, cùm non determinet nisi possessionem, sed breve de recto ꝙ utrumqȝ determinat, scilicet sey-

spring, although in truth it be not so, as if they have been in company together, such offspring shall be adjudged to be his heir, although it be not his offspring. But if his avowal and confession cannot consist with the nature of things, that is, if he has been absent for a year or for two years, and on his return he has found a little child born out of his wife, or in truth he was castrated or so infirm, that he could not beget a child, although he has avowed such child, nevertheless the truth ought to be preferred to his confession, which does not agree with the nature of things nor with reason, although some persons say that a writ of right ought to have place, which is true according to some.

f. 278 b.

Chapter XVIII.

1. Between what persons an assise of mortdancester does not lie.

It has been stated above between what persons an assise of mortdancester lies, and concerning the death of what persons. Now it is to be stated between whom it does not lie, lest it should happen that the property is not determined by the assise, which has no place except only in a cause of possession. And it is to be known that it has not a place between blood-relations such as coheirs, whether they are coparceners, that is capable of inheriting any inheritance descending from any common ancestor, or not capable. In which case, if they are capable coheirs, as if the inheritance is shareable in regard of several persons such as daughters, who are as it were one heir, or in regard of the inheritance itself which is shareable in itself, an assise shall not have place, but a writ of partition. And if an assise be sued out, it falls upon the exception of mere right being objected, since each of them is a nearer heir, as regards his own share, with respect to those who are more remote in another degree. And in which case an assise shall not have place, since it determines nothing but the possession, but a writ of right which determines both, to wit, the

sinam & jus merum, & unde cùm in prædictis casibus incipiat quis agere per assisam, datur tenenti exceptio contra assisam: & de·hac materia pleniùs dicetur infrà in tractatu de consanguinitate. Item sicut non jacet inter cohæredes legitimos & naturales & capaces participes, nec inter tales & non participes, ita nec inter legitimos & naturales tantum, sicut inter legitimos & bastardos, si fratri naturali objiciatur q sit bastardus vel etiā villanus, cùm sciri non possit utrum se ꝓbare possint legitimos & liberos esse vel non. Et licet se legitimos & liberos esse ꝓbaverint, non tamen ꝑ hoc se ꝓbant esse hæredes ꝓpinquiores, & sic non poterit assisa mortis antecessoris terminare ꝓprietatem, & unde alio brevi, s. de recto, opus erit ad terminandam ꝓprietatem. Et cùm fortè se legitimos & liberos esse probaverint, poterunt ulteriùs se ꝓbare hæredes ꝓpinquiores, ut filia de primo viro excipiat contra fratrem legitimum de secundo viro, q hæres esse non possit, cùm sit quasi extraneus quoad successionem in hæreditatem maternam, quamvis filius naturalis et legitimus matris communis: quia hæreditas materna data fuit in maritagium primo viro cum matre comūni & hæredibus de patribus duobus[1] ꝓvenientibus, & ideò q hæres esse non possit quamvis frater naturalis & legitimus, & unde si frater petierit versus sororem ꝑ assisam mortis vel e contrario vel versus extraneam personam, inter eos non jacebit assisa mortis antecessoris, cùm frater fortè docere posset contrarium, & hoc dico nisi cùm soror existens in seysina excipiendo statim habeat probationē ad manum, sicut instrumentum donationis vel aliam probationem. Si autem versus extraneam personam,

f. 279.

[1] "de ipsis duobus," MS. Rawl. C. 160.

seysine and the mere right, and whence when in the aforesaid cases a person commences proceedings by an assise, the tenant is allowed an exception against the assise, and this subject will be more fully discussed below in the treatise on consanguinity. Likewise as it does not lie between coheirs, who are legitimate and natural and capable coparceners, nor between such and those who are not coparceners, so it does not lie between those who are legitimate and those who are natural only, as between legitimate offspring and bastards, if it be objected to a natural child that he is a bastard or even a villein, since it cannot be known whether they can prove themselves to be legitimate and free or not. And although they may have proved themselves to be legitimate and free, they do not on that account prove themselves to be the nearest heirs, and so an assise of mortdancester cannot determine the property, and hence there will be need of another writ, to wit, of right to determine the property. And when by chance they have proved themselves to be legitimate and free, they may further prove themselves to be the nearest heirs, so that a daughter by a first husband may except against a legitimate brother by a second husband, that he cannot be heir, since he is as it were extraneous as regards the succession to the maternal inheritance, although a natural and legitimate son out of a common mother, because the maternal inheritance was given as a marriage portion to the first husband with the common mother and to the heirs sprung from them both, and therefore he cannot be heir although a natural and legitimate brother, and hence if the brother has claimed against the sister by an assise of mortdancester or the contrary or against an extraneous person, an assise of mortdancester shall not lie between them, since the brother by chance may prove the contrary, and this I say except when a sister being in seysine on excepting has in her hand the proof, as for instance the instrument of donation or some other proof. But if against an extraneous person, the

f. 279.

filia præfertur fratri cum probatione tali. Si autem probationem non habuerit, cadit assisa mortis antecessoris & agi oportet per breve de recto, & procedet inter eos magna assisa per hæc verba, scilicet: Utrum ipsa quæ tenens est majus jus habeat in terra illa, sicut in illa quæ data fuerit in maritagium primo viro suo cum tali matre communi & hæredibus de ipsis duobus venientibus, an talis frater de altero viro, qui petit sicut in illa quæ data fuit in maritagium cum tali matre communi & hæredibus ipsius matris, & non terminabitur negotium in hoc casu per *cuntey cuntey*[1] sicut inter cohæredes. Et eodem modo fiet si objiciatur villenagium, vel quòd petens genitus fuit de testiculo felonis quoad hæredem maternam,[2] secundùm quod inferiùs dicetur in tractatu per breve de recto. Inter cohæredes verò non habebit locum assisa mortis, nec procedet ubi postnatus talem habuerit seysinam ex tempore, quòd à seysina ejici non possit sine brevi dñi regis, & in quo casu cùm per talem seysinam paritatem habuerit cum antenato hærede propinquiore quoad possessionem, de jure & proprietate agi non poterit nisi per breve de recto, nec procedet assisa mortis antecessoris, cùm habeat postnatus tantundem juris quoad seysinam, quantum habet antenatus, & in brevi de recto terminabitur negotium per *cuntey cuntey*.[3] Si autem non habuerit postnatus talem seysinam longam (ut prædictum est) inter præsentes, vel longiorem inter absentes, secundùm quod antenatus agens fuit in partibus remotis vel remotioribus, sicut in Terra Sancta vel alia peregrinatione in partibus transmarinis longè vel longius, vel in regno longè vel longius extra coñ vel in coñ, vel in prisona, vel infirmitate gravi detentus, cùm venerit & postnatum recenter ejicere non pos-

[1] "par cunte cuntey," MS. Rawl. C. 160; " de comitatu in comita- " tum," MS. Rawl. C. 159.

[2] " quoad hæreditatem maternam," MS. Rawl. C. 159.

[3] " par counte counte," MS. Rawl. C. 159.

daughter is preferred to the brother with such a proof. But if she has not the proof, the assise of mortdancester falls, and proceedings must be had by a writ of right, and the great assise must have place between them under these words: whether she who is tenant has a greater right in that land, as in land which was given as a marriage portion to her first husband with such common mother and to the heirs springing from them both, or the said brother by another husband who claims it as in land, which was given as a marriage partion with such common mother and to the heirs of such mother, and the business shall not be decided in this case by *cuntey cuntey* as between coheirs. And in the same way it shall be done if villenage be objected, or that the claimant was begotten of the testicle of a felon, as regards his maternal inheritance, according to what will be said below in the treatise on a writ of right. But an assise of mortdancester shall not have place between coheirs, where the after-born has such a seysine founded on time, that he cannot be ejected from his seysine without a writ of the lord the king, and in which case since he has by such seysine a parity with the elder-born and next heir as regards possession, an action concerning the right and the property cannot be had except by a writ of right, nor shall an assise of mortdancester proceed since the after-born has as much right as regards the seysine as the elder-born has, and in a writ of right the writ shall be determined by *cuntey cuntey*. But if the after-born has not had such a long seysine as stated above in the presence of the parties or a longer seysine in the absence of the parties, according as the elder-born who brings the action was in remote or in more remote parts, as in the Holy Land or some other pilgrimage in parts far or further beyond the sea, or in the realm far or further distant, beyond the county or within the county, in prison or detained by severe illness, when he has arrived and cannot recently eject the after-

sit, bene jacebit assisa mortis inter tales cohæredes, sicut inter extraneas personas. Et quia ex quo postnatus habere non possit liberum tenementum ex tempore & longa & pacifica seysina, nunquam paritatem habebit cum antenato quoad possessionem, sed erit sicut extraneus quoad assisam mortis, quia seysina sua nulla est. Idem erit si, cùm antenatus ingredi non possit, statim sibi perquisiverit breve vel statim contentionem apposuerit, & in quibus casibus interrumpitur possessio postnati, quòd nunquam paritatem habebit cum antenato quoad possessionem. Et eodem modo observari poterit inter consanguineos, si agatur per breve de consanguinitate inter eos. Item frater antenatus feoffat fratrem suum medium cùm sint tres fratres, aut feoffat eum sine homagio tenere sibi & hæredibus suis, si talis frater obierit sine hærede de corpore suo, frater antenatus & feoffator erit hæres propinquior & cum eo poterit tenementum remanere. Item eodem modo, si ita feoffaverit tenendi de dominis capitalibus. Item si ita fratrem medium feoffaverit tenendi sibi & hæredibus suis quos habuerit de corpore suo, si sine talibus obierit seysitus, revertetur terra data fratri antenato sicut eschaeta pro defectu hæredis, licet alios habuerit remotiores, & evanescit homagium si fortè intervenerit, quod non est in primo casu. Si autem fratrem postnatum feoffaverit tenendi sibi & hæredibus suis quibuscunq, pro homagio & servitio, ille primogenitus & feoffator erit ejus hæres propinquior, quia quamdiu fuerit aliquis ex parte antenati, ille semper aliis præfertur qui sunt in linea transversali, & jus semper descendit antenato, & cum eo semper remanebit simul cum seysina, quia primā debet habere

f. 279 b.

born, an assise of mortdancester will well lie between such coheirs as between extraneous persons. And because where the after-born cannot have a freehold from time and long seysine, he shall never have a parity with the elder born as regards possession, but he will be as a stranger as regards an assise of mortdancester, because his seysine is null. It will be the same if, when the elder-born cannot enter, he shall have obtained for himself forthwith a writ or shall have forthwith given notice of an action, and in which cases the possession of the after-born is interrupted, that he will never have parity with the elder-born as regards possession. And in the same way it may be observed between cousins, if proceedings be had by a writ of consanguinity between them. Likewise an elder-born brother enfeoffs his intermediate brother when there are three brothers, or he enfeoffs him without homage to hold for himself and his heirs, if such a brother has died without an heir of his body, his elder brother who is also his feoffor shall be his next heir, and the tenement may remain with him. Likewise in the same manner, if he has thus enfeoffed it to be held of the chief lords. Likewise if he has thus enfeoffed his intermediate brother, to be held for himself and his heirs whom he may have of his own body, if he has died seysed without such heirs, the land given shall return to the elder brother as an escheat for defect of an heir, although he may have others more remote, and the homage, if by chance it has intervened, becomes evanescent, which is not the fact in the first case. But if he has enfeoffed the after-born brother to hold for himself and his heirs whomsoever for homage and service, the firstborn who is the feoffor shall be his next heir, because as long as there is any one on the side of the elder-born, he is always preferred to others who are of the transverse line, and right always descends to the elder-born, and will remain with him together with the seysine, for he ought to have the first seysine, and from his hand the land so given will

f. 279 b.

seysinam, & de manu sua ad remotiores deveniet terra sic data, si sit qui petat, si autem non, semper cum eo remanebit jus & seysina, cùm non sit hæres apparens, vel si appareat, nihil petat, nec à manu sua nec ab eo descendet jus merum per virtutem descensus, sed per necessitatem (si sit qui petat), cùm antenatus non possit esse hæres & dominus, quia sese non compatiuntur homagium & dominium, quia homagium expellit rem à manu feoffatoris usq; ad propinquiorem hæredem, scilicet ad filios vel filias si fuerint. Si autem non fuerint, vel cùm fuerint, defecerint, tunc ad fratrem postnatum, non per assisam mortis sed per breve de recto, & quia frater postnatus, nec filius nec filia esse poterunt propinquiores fratri medio sed frater antenatus, et sic sui erunt hæredes alii inferiores, sed nihil eis descendet jure hæreditario in vita antenati nisi per necessitatem, quia non potest esse dominus & hæres, & cùm inferiores hæredes sui per judicium recuperaverint, tunc primò descendet eis jus simul cum seysina & non ante, & unde si antenatus nullum habuerit hæredem de corpore suo & postnatus incipiat petere, & antequam obtinuerit in judicio incipiat antenatus habere hæredes, cadit actio fratris postnati. Sed si tunc inceperint esse, cùm judicium redditum sit pro fratre postnato, nunquam ab eo auferetur seysina. Eodem modo cùm liberi fratris antenati in seysina extiterint & positi in seysinam & defecerint, vel si nunquam antenatus se dimiserit & pueri defecerint, non competit actio postnato, sed antenatus semper se defendet erga postnatum in seysina sua per liberos suos, eo quòd sunt hæredes propinquiores.

descend to the more remote, if there be any one who claims, but if not, the right and the seysine will always remain with him, when there is no heir apparent, or if there be an heir apparent, he claims nothing, nor from his hand nor from him will the absolute right descend in virtue of descent, but through necessity (if there be any one who claims) since the elder-born cannot be heir and lord, because homage and dominion cannot consist together, because homage expels the thing from the hand of the feoffor to the next heir, to wit, to sons or daughters, if there be any. But if there are not any, or if they have failed, when they have been, then to an after-born brother, not by an assise of mortdancester but by a writ of right, and because he is an after-born brother, and neither a son nor a daughter can be next heir to an intermediate brother, but an elder-born brother, and so others lower in the line will be his heirs proper, but nothing will descend to them by hereditary right in the lifetime of the elder-born except through necessity, because he cannot be lord and heir, and when his proper heirs lower in the line have recovered by an assise, then for the first time, and not before, the right together with the seysine descends to them, and if the elder-born has no heir of his own body and the after-born begins to claim, and before he has obtained a judgment the elder-born begins to have heirs, the action of the after-born brother falls. But if they have begun to be, when judgment has been rendered in favour of the after-born brother, the seyine shall never be taken away from him. In the same manner when the children of an elder-born brother have been in seysine and have been put into seysine and have died, or if the elder-born has never surrendered the land and his boys have died, the after born [brother] is not entitled to an action, but the elder-born shall always maintain himself against the after-born in his seysine through his children, inasmuch as they are nearest heirs.

2. Casus, quod soror de eodem patre et eadem matre præfertur masculo de diverso patre de perquisito.

Neptis ex sorore avunculi ex eodem patre & eadem matre, & nepos ex fratre ejusdem ex eodem patre sed diversa matre, tulerint[1] assisam mortis antecessoris versus dominum capitalem neptis, s. ex sorore de morte avunculi, & nepos ex fratre de morte ejusdem petierunt per assisam quandam terram de seysina cujusdam avunculi Radulphi ipsorum, nepos verò ex fratre dicebat se esse hæredem propinquiorem, quia fuit filius fratris ipsius Radulphi, & neptis ex sorore ipsius Radulphi non debuit ipsi præferri, & quia ipse masculus & hæres masculi, & ipsa neptis fœmina & proveniens ex fœmina, & ideò ipse hæres propinquior; ad quod responsum fuit ex parte neptis q̄ nepos non potuit esse hæres propinquior, quia idem nepos fuit filius fratris prædicti Radulphi, sed pater ipsius neptis & prædictus Radulphus non fuerunt fratres de uno patre & una matre, sed de uno patre & diversa matre, & q̄ mater sua ipsius neptis, s. & Radulphus fuerunt de uno patre & una matre, & terra petita fuit perquisitum ipsius Radulphi, & non hæreditas descendens ab aliquo antecessore: & quia hoc dedici non potuit, consideratum fuit q̄ neptis fuerit hæres propinquior, quia provenit ex sorore ipsius Radulphi de eodem patre & eadem matre, & nepos quamvis ex fratre masculus & ex masculo, hæres remotior, quia ex diversa matre. Aliud fortè dicendum erit de hæreditate descendente, secundùm quosdā. Casus iste inveniri poterit in rotulo de termino P. & s. T. anno regis H. 3. in com̃ Sussex, assisa mortis, si Radul. de Rupe super Gilbertum de Aquila. Idem dici poterit de hæreditate descendente si frater obierit seysitus, quòd soror de uno patre &

f. 280.

[1] "tulerunt," MSS Rawl. C 160 and C. 159.

2. A case, in which a sister of the same father and the same mother is preferred to a male of the same father in regard to property acquired.

A niece out of a sister of an uncle from the same father and the same mother, and a nephew by the brother of the same from the same father but a different mother, brought an assise of mortdancester against a chief lord, to wit, the niece out of the sister concerning the death of her uncle, and the nephew by the brother concerning the death of the same, and they claimed by an assise certain land from the seysine of a certain Ralph their uncle, but the nephew by the brother said that he was the next heir, because he was the son of the brother of Ralph and the niece out of the sister of Ralph ought not to be preferred to him, and because he was a male and the heir of a male, and the niece was a female and the offspring of a female, and therefore he was himself a nearer heir; to which it was answered on the part of the niece that the nephew could not be the nearer heir, because the said nephew was the son of the brother of the aforesaid Ralph, but the father of the niece and the aforesaid Ralph were not brothers by one father and one mother, but by one father and different mothers, and the mother of the niece and Ralph were by one father and one mother, and the land claimed was an acquisition made by the said Ralph, and not an inheritance descending from some ancestor, and since this could not be gainsaid, it was adjudged that the niece was the next heir because she sprung from the sister of Ralph by the same father and the same mother, and the nephew, although a male by a brother and by a male, was a more distant heir, because out of a different mother. A different judgment would perhaps have to be pronounced concerning a descending inheritance according to some. Such a case may be found in the Roll of Easter and Trinity Terms in the third year of the reign of king Henry in the county of Sussex, an assise of mortdancester, if Ralph de Rupe against Gilbert de Aquila. The same may be said concerning a descending inheritance, if a brother died seysed, that the sister by one father

f. 280.

eadem matre hæres propinquior sit de seysina fratris, quàm masculus frater de altera uxore, & hoc ratione ventris.

Cap. XIX.

1.
De exceptione bastardiæ in assisa mortis antecessoris.

Exceptio bastardiæ objecta petenti vel tenenti in assisa mortis antecessoris perimit assisam, & vertit assisam quandoq; in juratam, quandoq; transmittit cognitionem ad curiam Christianitatis, secundùm quod objecta fuerit sic vel sic, & secundùm quod inferiùs pleniùs dicetur de exceptionibus, in tractatu de bastardia & ibi pleniùs, & quis possit eam opponere & cui. Sed refert inter quas personas locum habere debeat & tenere in assisa mortis antecessoris. Et sciendum quòd ubicunq; assisa locum habet, & inter quascunq; personas, ibi locum habet exceptio bastardiæ, & inter easdem personas. Item inter easdem personas ubi locum habet consanguinitas loco assisæ, & ad quas assisa se non extendit: ubi autem locum non habet assisa nec consanguinitas, ibi nec locum habebit exceptio bastardiæ, scilicet ubi agi oportet de necessitate per breve de recto, quia exceptio bastardiæ totum terminat negotium, tam super possessione quam super proprietate, quod quidem non facit assisa nec consanguinitas, nisi tantum super possessione, et unde inter conjunctas personas locum non habebit, sed tantum inter extraneas personas, licet videatur in prima facie quòd inter conjunctas personas procedi possit in cognitione bastardiæ, ad hoc quòd si ille cui objicitur se legitimum probare non possit, cadat ab actione sua & à causa, vel seysinam amittat: secundùm quod objecta fuerit petenti vel tenenti, & sic terminetur negotium

and the same mother is a nearer heir to the seysine of her brother, than a male brother by another wife, and this by reason of the womb of the mother.

Chapter XIX.

1. Of an exception of bastardy in an assise of mortdancester.

An exception of bastardy objected to the claimant or the tenant in an assise of mortdancester puts an end to the assise, and turns the assise sometimes into a jury, and sometimes transfers the cognisance to a court of Christianity, according as it has been objected in this or that manner, and according to what will be said below on the subject of exceptions, in the treatise on bastardy and there more fully, and who may raise the objection and against whom. But it matters between what persons it ought to have place and to hold good in an assise of mortdancester. And it is to be known that wherever the assise has a place and between whatever persons, there an exception of bastardy has a place, and between the same persons. Likewise between the same persons where consanguinity has a place instead of an assise, and to whom an assise does not extend; but where neither an assise nor consanguinity have place, there neither an exception of bastardy shall have place, where the proceedings must of necessity be had by a writ of right, because an exception of bastardy terminates the whole affair, as well upon the possession as upon the property, which neither an assise nor consanguinity does, except only upon the possession, and hence it shall not have a place between blood-relations, but only between strangers in blood, although it seems at first sight that proceedings may be had between blood-relations in the cognisance of bastardy, inasmuch as if he to whom it is objected cannot prove himself to be legitimate, he would fall from his action and his cause or would lose seysine, according as it was objected against a claimant or against a tenant, and the affair would be terminated according

secundùm quosdam &c. Sed quia poterit adeò de facili se probare legitimum et facere se conjunctam personam, et sic provenire possit in casu[1] à quo incipere non possit assisa nec locum habere nisi tantum breve de recto, ideò non tenet exceptio bastardiæ non magis quàm assisa. Si verò bastardia objiciatur, quandoque terminatur in foro seculari, quandoq; in foro ecclesiastico: secundùm q inferiùs dicetur pleniùs de eodem tractatu. Si autem cùm objecta nō fuerit, dicant juratores in veredicto suo quòd petens bastardus sit simpliciter, vel cum tali adjectione, q natus fuit ante matrimonium, tunc non procedet assisa, quia vacua est petitio et cadit. Eodem modo dici poterit de tenente, ut de ultimo itinere M. de P. in com̃ Eborum circa finem rotuli. Item eodem modo, si sic objecta fuerit q petens natus fuit ante matrimonium per duos annos, vel tres, et partes inde se posuerint in juratam, et juratores dicant absque aliqua mentione bastardiæ quòd talis sit propinquior hæres, et quòd antecessor suus obiit seysitus ut de feodo, & post terminum, ita quòd omnes articuli brevis concurrant, non esset ulteriùs inquirendum de bastardia, quia legitimitas sic ꝓbatur indirectè: ut de itinere W. de Ralegh in com̃ Kanc., assisa mortis antecessoris, si Adam le Gardener, nec erit in hac parte locus convictioni propter partium consensum. Si autem bastardia non objiciatur ut supra, erit contrarium. Item videndum erit in persona cujus procedere debeat inquisitio bastardiæ, quia refert utrum ille cui objicitur vel qui objicit majoris sit ætatis vel minoris. De eo autem qui est infrà ætatem & tenens non ꝓcedit inquisitio ante ætatem, ut si custos dicat q nihil tenet nisi in custodia cum tali qui est infrà

Britton, iii. ch. xxii. § 3.

f. 280 b.

[1] "pervenire possit in casum," MSS. Rawl. C. 160 and C. 159.

to some &c. But because he can so easily prove himself to be legitimate and make himself out to be a blood-relation, and so may arrive at a case from which an assise cannot commence nor have place, but only a writ of right, therefore an exception of bastardy does not hold good any more than an assise. But if bastardy be objected, it is sometimes determined in the secular court, sometimes in the ecclesiastical court, according to what will be stated more fully in the same treatise. But if, when it has not been objected, the jurors should say in their verdict that the claimant is a bastard simply, or with this addition, that he was born before matrimony, then the assise shall not proceed, because the petition is void and falls. In the same manner it may be said concerning a tenant, as in the last iter of Martin de Pateshull in the county of York about the end of the roll. Likewise in the same manner if it be so objected that the claimant was born two or three years before marriage, and the parties have thereupon put themselves on a jury, and the jurors say without any mention of bastardy that so-and-so is the next heir, and that his ancestor died seysed as of fee, and after a term, so that all the articles of the writ concur, no further inquiry would have to be made concerning bastardy, because his legitimacy is thus proved indirectly, as in the iter of William de Ralegh in the county of Kent, an assise of mortdancester, if Adam le Gardener, nor will there be in this part place for a conviction on account of the consent of the parties. But if bastardy be not objected as above, the contrary will happen. Likewise it is to be seen in whose person the inquisition of bastardy ought to proceed, because it matters whether he to whom it is objected or he who objects is of full age or a minor. But concerning him who is under age and the tenant the inquisition does not proceed before he is of full age, as if his guardian should say that he holds nothing except in wardship

f. 280 b.

ætatem, & excipiatur q talis bastardus sit: ut de itinere M. de P. in com̃ Kanc. anno regis H. xi. de termino s. M. incipiente xii., assisa mortis antecessoris, si Wilhelmus de Herst, & sic remansit inquisitio usq; ad ætatem. In eodem autem itinere videtur contrarium, in assisa mortis antecessoris, si H. Paynefore,[1] de duobus qui fuerunt infrà ætatem, & contra quos processit inquisitio super bastardia per assisam, & ubi objectum fuit quòd bastardi fuerunt, & juratores hoc idem dixerunt, quia nati in adulterio: sed non fuit contrarium, quia hîc petentes & ibi tenentes, & quòd inquisitio ꝑcedere debeat de bastardia versus petentem qui fuerit infrà ætatem, quòd pater suus super hoc nunquam desponsavit matrem suam, vel de hoc quòd natus fuit antequam mater sua esset desponsata, procedet super hoc jurata: ut de ultimo itinere M. de P. in com̃ Salop.

2. De inquisitione bastardiæ in tali assisa.

Transmittitur quandoq; ad curiam Christianitatis inquisitio bastardiæ in suo casu, ubi scilicet matrimonium sive sponsalia omninò dedicta fuerint in assisa mortis antecessoris, secundùm q bastardia objecta fuerit petenti vel tenenti, & fiat inquisitio per tale breve: Rex tali episcopo salutem. Sciatis quod cùm A. in curia nostra coram &c. peteret versus B. & E.[2] uxorem ejus tantam terram cum pertinentiis in tali villa per assisam mortis antecessoris inde ibi inter eos sum̃onitam, & versus talem tantam terram cum pertinentiis in eadem villa ut jus suum, & prædicta C. diceret se esse propinquiorem hæredem A.[3] de cujus morte idem A. tulit assisam suam: Idem A. objecit eidem C. q nullum jus habere potuit in terra illa, eo quòd bastarda est: & quoniam hujusmodi causæ cognitio ad

[1] "Payneforer," MS. Rawl.C.160.
[2] "B. et C.," MSS. Rawl. C. 160 and C. 159.
[3] "hæredem E.," MSS. eadem.

with so-and-so who is under age, and it be excepted that so-and-so is a bastard, as in the iter of Martin de Pateshull in the county of Kent in the eleventh year of king Henry in Michaelmas term at the beginning of the twelfth year, an assise of the death of an ancestor, if William de Herst, and so the inquisition was stayed until he was of full age. But in the same iter the contrary seems to have been held in an assise of mortdancester, if Henry Paynefore, concerning two who were under age and against whom an inquisition upon bastardy proceeded by an assise, and where it was objected that they were bastards, and the jurors said the same thing, because they were born in adultery; but it was not contrary, because here they were claimants and there tenants, and because the inquisition ought to proceed concerning bastardy against the claimant who was under age, upon this that his father never espoused his mother, or concerning this that he was born before his mother was espoused, upon this a jury shall proceed as in the last iter of Martin de Pateshull in the county of Salop.

2. Concerning an inquest of bastardy in such an assise.

An inquest of bastardy is sometimes transmitted to the court of Christianity in its own case, where for instance matrimony or espousals have been altogether denied in an assise of mortdancester, according as bastardy has been objected to the claimant or the tenant, and let an inquest be held by such a writ. The king to bishop so-and-so greeting: Know ye that when A. in our court before &c. claimed against B. and C. his wife so much land with its appurtenances in such a vill by an assise of mortdancester there summoned thereupon between them, and against the said parties so much land with its appurtenances in the said vill as his right, and the aforesaid C. said that she was the next heir to E. concerning whose death the said A. had brought his assise: the said A. has objected to the said C. that he could have no right in that land inasmuch as he was a

forum spectat ecclesiasticum, vobis mandamus q convocatis coram vobis convocandis, rei veritatem diligenter inquiratis, & inquisitionem quam inde feceritis nobis sciri faciatis per literas vestras patentes. Teste &c. Et quid fieri debeat ulteriùs, infrà de exceptionibus pleniùs dicetur, eo adjecto q si tenens petenti objiciat bastardiam, & petens vice versa tenenti, quæritur quis eorum priùs probare debeat legitimitatem? & sciendum q ille qui petit, quia eo non probante legitimitatem remanebit possessio cum tenente, sive ipse tenēs bastardus sit sive non. Contendunt enim multotiens inter se petens & tenens (& remanebit possessio[1] cum tenente) sive tenens bastardus sive non, & cùm contendant inter se, dicunt:[2] Si ego sum bastardus & tu similiter, & priùs[3] semper inquirendum erit de bastardia,[4] petentis quàm tenentis, quia si petens jus non habeat petendi, remanebit in suo loco possessio, ut prædictum est.

[1] "et remanebit possessio" down to "inter se," omitted MSS. Rawl. C. 160 and C. 159.

[2] "et dicunt," MSS. eadem.

[3] "et sic prius," MSS. eadem.

[4] "tam petentis," MSS. eadem.

bastard, and the cognisance of a cause of this kind belongs to the ecclesiastical court, we command you that, having convoked before you the persons who ought to be convoked, you inquire diligently into the truth of the matter, and certify to us the inquisition which you have held thereupon by your letters patent. Witness &c. And what ought to be done further, will be stated below more fully in treating of exceptions, with this addition, that if the tenant objects bastardy against the claimant and the claimant conversely against the tenant, it is questioned which of them ought first to prove his legitimacy, and it is to be known that he who claims must do so, because upon his failing to prove his legitimacy the possession will remain with the tenant, whether the tenant be a bastard or not. For the claimant and the tenant frequently contend between themselves (and the possession will remain with the tenant) whether the tenant be a bastard or not, and when they contend between themselves, they say, "If I am a bastard, "you are likewise so;" and an inquiry concerning the bastardy of the claimant must always be had before that of the tenant, because if the claimant has no right to claim, the possession will always remain in its place, as above said.

TRACTATUS QUARTUS
LIBRI QUARTI,

IN QUO TRACTATUR

DE CONSANGUINITATE.[1]

f. 281.

Cap. I.

1. Breve de consanguinitate.

Cum assisa mortis antecessoris infrà certos gradus limitetur, & locum habeat de morte certarum personarum versus certas personas, & ulteriùs non extenditur, ne semper ad ipsum jus p breve de recto recurratur de seysina quæ probari possit de proprio visu & auditu alicujus, in subsidium assisæ mortis antecessoris provisum est quoddam breve quod dicitur breve de consanguinitate, ut causam possessionis terminet in gradibus & personis, ad quos assisa se non extendit, de omnibus de quibus antecessor obiit seysitus ut de feodo, & non ut de mero jure, quia hoc non agitur nisi tantum de possessione, ad evitandum dubium eventum duelli & magnæ assisæ per breve de recto, quatenus tempus assisæ mortis antecessoris permiserit. Et cū loco assisæ mortis antecessoris accipi debeat & teneri de se seysina antecessoris: meritò sequi debet in magna parte naturam illius assisæ, cujus loco sumitur s. in tempore, ut tempus sive terminum assisæ non excedat. Item in personis, ut locum habeat breve de consanguinitate extra terminos assisæ inter easdem personas, sive majores sint sive minores, inter quas

Britton, iii. ch. xxvi. § 1. Fleta, 306.

[1] "Hic incipit Tractatus Quartus Libri Quarti," MS. Rawl. C. 160.

THE FOURTH TREATISE

OF

THE FOURTH BOOK

WHICH TREATS

OF CONSANGUINITY.

CHAPTER I.

f. 281.

1. A writ of cosinage.

Since an assise of mortdancester is limited within certain degrees, and takes a place concerning the deaths of certain persons against certain persons, and is not extended further, that recourse should not always be had to the right itself by a writ of right concerning a seysine which can be proved by the view and hearing of some one, in aid of the assise of mortdancester a certain writ has been provided which is called a writ of cosinage, that it may determine the cause of possession in degrees and persons, to which the assise does not extend itself, concerning all things of which an ancestor died seysed as of fee and not as of mere right, because this proceeding is only concerning possession, to avoid the doubtful event of a duel and a great assise, by a writ of right, as far as the time of an assise of the death of an ancestor will permit. And since in the place of an assise of mortdancester the seysine of the ancestor ought to be accepted and held good, it ought deservedly to follow in a great part the nature of that assise, in the place of which it is employed, to wit, in time, that it should not exceed the time or the term of an assise. Likewise in the persons, that the writ of cosinage should have place beyond the terms of an assise between the same persons, whether persons of full age or minors, between whom an assise has place within

locum habet assisa infrà suos terminos & non inter alias, sicut inter conjunctas personas (ut prædictum est) ascendendo ab avo usq, ad triavum & ulteriùs si tempus permittat, qui omnes sic ascendendo rectè dici poterunt antecessores ad modum assisæ mortis antecessoris, vel descendendo à nepote usq, ad trinepotem & ulteriùs, si tempus permiserit: qui omnes rectè dici poterunt consanguinei, nisi sit qui dicat sic, q omnes sunt consanguinei tam ascendentes quàm descēdentes. Nec obstare debet q quidam dicunt q per tale breve de recto quod incipit per præcipe, amittunt curiam suam domini curiarum, quod est & esse possit contra comunem libertatem (ut dicunt), sed revera non est ita, q tenentes [1] ꝑpter seysinam mortis antecessorum [2] suorum semper teneatur [3] adire curiam dominorum, quia si plures [4] competant actiones, unam illarum quam voluerit eligere poterit, & ea experiri. Poterit enim quis habere assisam mortis antecessoris, novę disseysinę, & breve de ingressu, & breve de recto uno & eodem tempore, & quam istarum voluerit eligere poterit nec compelli debet magis ad unam q ad aliam, nec ad breve de recto magis q ad assisam. Si autē agere velit per assisam novæ disseysinæ, sic tollere poterit curiam dñi sui sine injuria alicujus ad breve de recto, f. 281 b. & sic de aliis placitis & assisis, & sic nō fit dñis curiarum injuria, si petens p alia brevia agere voluerit q per breve de recto, cum ad tale breve non teneatur nisi velit. Si autē tempus excedat terminum assisæ mortis antecessoris, locum habebit breve de recto, cùm petēs ꝑbare non possit seysinā de visu & auditu alicujus ꝑprio sed alieno, scilicet patris qui vidit, & hoc filio suo injunxit q testis esse possit. Breve de

[1] "petentes," MSS. Rawl. C. 160 and C. 159.

[2] "propter seysinam antecessorum," MS. Rawl. C. 160.

[3] "teneantur," MS. Rawl. C. 160.

[4] "si cui plures," MS. Rawl. C. 160.

its own limits, and not between others as between blood-relations (as stated above) by ascending from the grandfather up to the grandfather's grandfather, and further, if the time should permit, all of whom in so ascending may be rightly said to be ancestors after the manner of an assise of mortdancester, or in descending from the grandson to the grandson's grandson and further, if the time shall permit, all of whom may be rightly called cousins, unless there be some one who says thus, that all are cousins as well in the ascending line as in the descending line. Nor ought it to be an obstacle that some say, that by such a writ of right which begins with "Præcipe," the lords of courts lose their court, which is and may be against the common liberty (as they say), but in truth it is not so, since the claimants on account of the seysine of their deceased ancestors are always bound to have recourse to the court of their lords, because if any one is entitled to several kinds of action, he may choose that one of them which he wishes and try it. For a person may have an assise of mortdancester, an assise of novel disseysine, and a writ of entry and a writ of right at one and the same time, and may choose which of them he wishes, nor ought he to be compelled to have recourse to one rather than to another, nor to a writ of right rather than to an assise. But if he should wish to proceed by an assise of novel disseysine, he may so set aside the court of his lord without injury to any one as regards a writ of right, and so of other pleas and assises, and thus no injury is done to the lords of courts, if the claimant wishes to proceed by other writs than by a writ of right, since he is not bound to such a writ unless he chooses. But if the time exceeds the term of an assise of mortdancester, a writ of right shall have place, when a claimant cannot prove his seysine by the view and hearing of any person of his own knowledge, but upon hearsay, as upon the knowledge of his father who saw it and communicated it to his son in order that he might be a witness. A writ

f. 281 b.

consanguinitate tale est. Rex vic. salutē. Pręcipe A. q justè & sine dilatione reddat B. tantam terram cum ptinentiis in tali villa de qua C. consanguineus ipsius B. cujus hæres ipse est vel antecessor talis sine expressione, vel cum expressione, s. nepos vel avus suus fuit seysitus in dominico suo ut de feodo, die quo obiit (ut dicit) & nisi fecerit & talis fecerit te securum &c. tunc summoneas talem &c. quòd sit ostensurus quare non fecerit. Teste &c.

Cap. II.

1. De intentione petentis et responsione tenentis.

Post essoñ verò præsentibus in judicio partibus, pponat petens intentionē suam tali modo. A. petit versus B. tantam terram cum ptinentiis in tali villa ut jus suum, & sic fundat intentionem. Et unde talis nomine antecessor vel consanguineus suus, cujus hæres ipse est (cū expressione vel sine) fuit seysitus in dominico suo ut de feodo, die quo obiit. Et de ipso tali descendit jus prædictæ terræ cuidam tali filio & hæredi, & sic deinceps per omnia sicut per breve de recto, sicut inferiùs dicetur usq; ad illū qui petit, & q tale sit jus suum & q talis antecessor ita fuit seysitus offert, &c.

2. Responsio ad tale breve.

Et B. venit & defendit jus suum &c. & dicit q non debet ad hoc breve respondere q ipse tenens & petens sunt de eodem stipite, à quo descendit hæreditas petita, & ita q non valet breve de consanguinitate non magis inter eos q assisa. Sed videnda est ratio quare.

of cosinage is of this kind. The king to the viscount greeting. Enjoin A. that justly and without delay he restore to B. so much land with its appurtenances in such a vill of which C. the cousin of the said B. whose heir he is, or so-and-so his ancestor without any specification, or with a specification, to wit, his grandson or grandfather, was seysed in his demesne as of fee, on the day on which he died (as he says), and unless he so does or so-and-so has given security to you &c., then summon so-and-so that he be present to show cause why he has not done it. Witness &c.

Chapter II.

1. Of the declaration of the claimant and the answer of the tenant.

But after the essoins the parties being present in judgment, let the claimant set forth his declaration in this manner. A. claims against B. so much land with its appurtenances in such a vill as his right, and so founds his declaration, and whereof so-and-so by name his ancestor or cousin, whose heir he is (with a specification or without) was seysed in his demesne as of fee, on the day on which he died. And from such person the right in the aforesaid land has descended to a certain so-and-so as his son and heir, and so in succession through every stage as in a writ of right, as will be stated hereafter, down to him who is the claimant, and that such is his right and that so-and-so his ancestor was so seysed he offers to prove &c.

2. The answer to such a writ.

And B. comes and maintains his right &c., and says that he ought not to answer to this writ because he the tenant and the claimant are from the same stock, from which descends the inheritance claimed, and so that a writ of cosinage does not avail between them any more than an assise.

3. De exceptione paritatis, quæ est in personas descendentes de eodem stipite.

Poni autem poterit casus in personis trium fratrum & multis modis: ut si pater cōmunis moriatur seysitus de aliqua hæreditate vel alius antecessor, & postnatus se posuerit in seysinam totius hæreditatis, cùm non sit partibilis, vel si pater vel alius antecessor cōmunis, vel frater antenatus vel extranea quævis persona feoffaverit fratrem medium, qui inde obiit seysitus sine hærede de se, & antenatus vel postnatus se ponat in seysinā, & primò: sicut E. frater postnatus ponat se in seysinam, A. frater antenatus petat versus eum per breve de consanguinitate, vel per assisam: respondere poterit idem C. q ad breve de consanguinitate nō tenetur respondere non magis q ad assisā, quia ipsi A. & C. antenatus & postnatus sunt de eodē stipite à quo descendit hæreditatis, à patre vel alio antecessore cōmuni vel fratre medio. Et ipse C. tantundē juris habet in prædicta hæreditate quātum ad seysinā, cùm extiterit in longa & pacifica seysina inter præsentes, & cùm sit justus hæres & propinquus ipsius antecessoris, & adeò propinquus sicut ille A. frater antenatus, & unde cùm pares sint in jure possessorio, non vult ei respondere ꝑpter juris paritatem: & unde si antenatus dicat se esse ꝑpinquiorem, & nemo poterit esse hęres ꝑpinquior nisi ratione juris meri q ei descendit, & nec assisa nec consanguinitas terminare possunt jus merū nisi tantū breve de recto: ideò de necessitate cadit assisa & cōsanguinitas, & terminabit negotiū ꝑ breve de recto, ubi nec duellū nec magna assisa, sed ꝑ *cunte cuntey*[1] omninò, vel q dicat in fine & ostendat quare hęreditas remanere nō possit cum antenato qui est hęres ꝑpinquior, quoad

Britton, iii. ch. xxvi. § 2.

f. 282.

[1] "counte counte," MS. Rawl. C. 159, of supra, p. 316.

3. Concerning an exception of parity, which is against persons descended from the same stock.

But a case may be supposed in the persons of three brothers and in many modes, as if a common father dies seysed of a certain inheritance, or some other ancestor, and the younger-born has put himself into seysine of the entire inheritance, when it is not shareable, or if a father or other common ancestor or an elder-born brother or some stranger in blood has enfeoffed an intermediate brother, who died seysed thereof without an heir of his body, and the elder-born or the after-born brother puts himself into seysine, and in the first instance: as E. the after-born brother puts himself into seysine, A. the elder-born brother claims against him by a writ of cosinage or by an assise, the said C. may answer, that he is not bound to answer to a writ of cosinage, no more than to an assise, because the said A. and C. the elder-born and the younger-born are from the same stock from which the inheritance descends, from a father or another common ancestor or intermediate brother. And the said C. has as much right in the aforesaid inheritance as far as regards the seysine, since he has been in a long and peaceable seysine amidst all the parties present, and since he is a lawful and near heir of the said ancestor, and as near as the said A. the elder brother, and hence since they are peers in possessory right, he does not wish to make answer to him on account of his parity of right, and hence if the elder-born says that he is nearer, and no one can be a nearer heir except in regard of the mere right which descends to him, and neither the assise nor the writ of cosinage can determine the mere right, except only a writ of right; therefore of necessity the assise and the writ of cosinage fall, and the business will be determined by a writ of right, where there is neither the duel nor the great assise, but by *cuntey cuntey* altogether, or that he should state in the end and show wherefore the inheritance cannot remain with the elder-born, who is the next heir as far as regards right, because homage has in-

f. 282.

jus: q̇a homagiū intervenit, ut sciatur quis ꝑpinquior, & ꝑ hoc heres rectior. (Sine prejudicio sentētię melioris) videt᷑ q̱ nō poterit frater postnatus habere exceptionē paritatis cōtra fratrē antenatū quātū ad seysinā nisi possessio sua sive seysina lōga fuerit & pacifica inter præsentes habita, quia si fuerit brevis vel interrupta, nō valet: inter præsentes dico, q̇a si quis præsens dissimulaverit ad tēpus, sibi prejudicat ꝑpter taciturnitatē, cū vigilantibus jura subveniāt. Secùs autē si inter absentes, ubi tēpus nō currit: & ideò nisi talis seysina longa fuerit & pacifica inter p̃sentes (ut p̃dictū est) nō potest dicere postnatus q̱ habeat tantū juris quoad seysinā quātū antenatus, cùm seysina sua nulla sit vel nō sufficiens cùm sit brevis vel lōga, tamē interrupta. Et unde cùm longā habuerit postnatus seysinā & pacificā inter p̃sentes, q̱ sine brevi ejici nō possit quin recuperet ꝑ assisam, tūc primū liberū habet teñtum & cōpetit ei assisa & exceptio paritatis versus antenatū, et sic nō habebit antenatus actionē nisi ꝑ breve de recto, & ubi obstabit ei casus regis,[1] & anteq̇ sic habuerit postnatus lōgā & pacificā possessionē, sed antenatus[2] postnatū recēter ejecerit, nō recuperabit ꝑpter seysinā tenerā. Si autē ipsū statim ejicere nō possit & recēter faciat rē cōtentiosam ꝑ interpellationē vel impetrationē diligentē, & sic nunq̱ habebit postnatus pacificam seysinā & sic nunquā liberū teñtum & ꝑ consequēs nullā seysinā. Sic ergo nō cōpetit ei exceptio paritatis cū nō sit in seysina nisi nuda pedū positione, & ūde in hoc casu bene jacebit inter antenatū & postnatū assisa mortis

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[1] "casus regis," cf supra, p. 232.

[2] "si antenatus," MS. Rawl. C. 160.

tervened, that it may be known who is the next heir and thereby the more rightful heir. (Without prejudice to a better opinion) it seems that a younger-born brother cannot have an exception of parity against an elder-born brother as far as regards seysine unless his own possession and seysine has been long and peaceably held amidst the parties present, because if it has been short and interrupted, it is of no avail, amidst the parties present I say, because if a party being present has dissembled for a time, he prejudices himself on account of his taciturnity, since laws assist the vigilant. But it is otherwise amongst the absent, where time does not run, and therefore unless such seysine has been long and peaceful amidst the parties present (as said above) the younger-born cannot say that he has as much right in respect of seysine as the elder-born, since his seysine is null or not sufficient, when it is short or long but interrupted. And hence when the younger-born has had a long and peaceable seysine amidst the parties present, that he cannot be ejected without a writ so as to prevent him recovering possession by an assise, then for the first time he has a free tenement, and he is entitled to an assise and an exception of parity against the elder-born, and so the elder-born shall not have an action except by a writ of right, and where the case of the king will be in his way, and before the younger-born has thus had a long and peaceable possession, if the elder-born has recently ejected the younger-born, he shall not recover on account of his tender seysine. But if he cannot forthwith eject the said younger-born and he has made the estate contentious by an interpellation or a diligent suing out of a writ, the younger-born will thus never have a peaceable seysine, and so never a free tenement, and conquently no seysine. He is thus not entitled to an exception of parity since he is not in seysine except by the bare planting of his feet upon it, and hence in this case an assise of mortdancester will well lie between the elder-born

ātecessoris, sicut cōtra quēlibet extraneū. Et unde cùm talis postnatus donationē fecerit de com̄uni hæreditate & vocatus fuerit ad warantū p feoffamentū, videndum erit qualē frater postnatus ante donationē habuerit seysinā, secundùm q superiùs dictū est, & secundùm hoc cùm warantizaverit pcedet assisa versus postnatum qui warantizavit, vel remanebit, q locū habeat breve de recto, quia pvenit in eum casum &c. nec poterit aliquis dare nisi ille qui seysinam habuerit. Cùm frater postnatus in possessione fuerit hereditatis paterne & in pacifica seysina, & ita q sine judicio ejici nō possit & feoffaverit inde aliquē, & cùm frater antenat⁹ assisam mortis antecessoris inde portaverit super feoffatū qui feoffatorē suum viz. fratrē postnatū inde vocaverit ad warātū, & qui ei warātizaverit, & postea respōdeat ad assisā, q assisa mortis antecessoris nō jacet inter ipsū fratrē[1] ātenatū ppter paritatē juris possessorii, sed dicat q nō jaceat inter eos assisa nisi tantū breve de recto, cōtētio est inter majores utrū pcedere debeat assisa vel nō, dicūt enim quidā q assisa pcedere nō debet ppter paritatē juris nō magis q pcederet si aliū nunq feoffarēt, cùm ipse postnatus jā p warantiā effectus sit quasi dn̄s & tenens rei, & q pcedendum est p breve de recto, ubi nec duellū nec magna assisa nisi tantū narratio super descensu & ipso jure majore. Et sunt qui dicunt q p assisam pcedendū erit, q̇a revera licet frater postnatus warantizaverit, & licet teneatur defendere possidentē in seysina, tamen ipse non possidet: quod quidem probari poterit multis rationibus. Quia tenens qui warantum vocavit, licet ei warantiza-

f. 282 b.

[1] "ipsum et fratrem;" MS. Rawl. C. 160.

and the younger-born, as against any stranger in blood. And hence when such a younger-born has made a donation of the common inheritance and is called to warrant pursuant to the feoffment, it will have to be seen what seysine the younger-born brother had before the donation, according to what has been said above and according to this when he has warranted the donation, the assise shall proceed against the younger-born brother, who has warranted it, or it shall be stayed, that a writ of right may have place, because it has arrived at that case &c., nor can any one give except he who has the seysine. When a younger-born brother has been in possession of a paternal inheritance and in peaceable seysine, and so that he cannot be ejected without a judgment, and has enfeoffed any one with it, and when the elder-born brother has brought thereupon an assise of mortdancester against the feoffee, who has called his feoffor, to wit, the younger-born brother, to warrant his feoffment, and who has warranted it to him, and afterwards answers to the assise, that an assise of mortdancester does not lie between him and his elder-born brother on account of the parity of their possessory right, and he says that an assise does not lie between them but only a writ of right, there is a dispute amongst the elders whether an assise ought to proceed or not, for some say that an assise ought not to proceed on account of the parity of right, no more than if he had not enfeoffed another, since the said younger-born was already by the warranty made as it were the lord and tenant of the estate, and that proceedings should be had by a writ of right, where neither the duel nor a great assise would be had, but only a statement of the descent and the greater right. And there are some who say that proceedings must be had by an assise, because in truth although the younger-born brother has warranted, and although he is bound to maintain the possessor in seysine, nevertheless he himself does not possess, which may be proved by many reasons. Because the tenant who has

f. 282 b.

tum fuerit, tamen à seysina non recedit, sed expectabit eventum placiti inter warantum suum et petentem, et si warantus suus eum defendere possit, remanebit in seysina, et si non, tunc primò cùm warantus suus contra se judicium habuerit, ejicietur à seysina, et incontinenti de terra waranti consequetur excambium. Et ideò videtur q frater postnatus non est in seysina, et hac ratione q versus eum procedat assisa. Sed (sine præjudicio melioris sententiæ) videtur, secundùm ultimum casum, q procedet assisa: maximè quia frater postnatus non est tenens sed defensor tenentis, & licet faciat verba defensionis pro tenente, quod videri poterit manifestiùs ex hoc quod dicitur, q assisa non jacet inter eos sed breve de recto, quia ex hoc sequitur, q si assisa cadere debet in persona postnati eo q tenens sit secundùm quosdam, per eandem viam resurgere deberet per breve de recto inter eos, per hôc quod dicitur, q non jacet assisa inter eos sed breve de recto. Sed si breve de recto contra ipsum sit impetratum, non potest procedere, quia ipse revera non tenet, unde si cadat assisa & similiter breve de recto, sic cadit actio & versus warantum & versus tenentem: quod esse non debet. Procedat igitur assisa & non breve de recto in hoc casu. Item si cadere debeat assisa inter eos & de necessitate impetretur breve de recto super tenentem, in electione tenentis erit utrum warantum vocare voluerit vel non, nec ad hoc compelli poterit contra voluntatem, & sic procedere debet breve de recto inter fratrem antenatum petentem & tenentem, sequetur ex hoc quod tenens se defendere poterit per duellum vel magnā assisam, secundùm quod volu-

called a warrantor, although the warranty has been fulfilled for him, nevertheless does not withdraw from seysine, but he will await the event of the plea between his warrantor and the claimant, and if his warrantor can maintain him, he will remain in seysine; and if not, then for the first time, when his warrantor has had judgment against him, he will be ejected from seysine, and forthwith will obtain compensation from the land of the warrantor. And therefore it seems that the younger-born brother is not in seysine, and for this reason that the assise proceeds against him, but (without prejudice to a better opinion) it seems according to the last case that the assise shall proceed chiefly because the younger-born brother is not the tenant but the defender of the tenant, and although he plays the part of defence for the tenant, which may be seen more clearly from this, that it is said that an assise does not lie between them, but a writ of right, because it follows from this, that if an assise ought to fall in the person of a younger-born brother inasmuch as he is the tenant according to some, through the same way it ought to revive by a writ of right between them, through this which is said, that an assise does not lie between them, but a writ of right. But if a writ of right has been sued out against him, it cannot proceed, because he himself is in truth not the tenant, whence if the assise falls and in like manner the writ of right, so also falls the action both against the warrantor and against the tenant, which ought not to be. Let the assise therefore proceed and not the writ of right in this case. Likewise if an assise ought to fall between them and of necessity a writ of right is sued out against the tenant, it will be at the election of the tenant whether he will call a warrantor or not; nor can he be compelled thereto against his will, and so a writ of right ought to proceed between an elder-born brother as claimant and a tenant, it will follow from this that the tenant may defend himself by the duel or the great assise according as he wishes, which

erit, q grave esset petenti de tam recenti seysina. Si autem frater antenatus priùs se posuerit in seysinam, & postnatus petat versus eum per assisam vel consanguinitatem, ad quod respondere poterit antenatus, q ad hoc breve respondere non debet ratione supradicta, quia cum per tale breve nihil petatur nisi seysina tantum & conjuncta sit seysina cùm ipso jure in sua persona, & seysina in hoc casu à jure per se separari non possit, cùm sequi debeat jus in descensu, oportet q postnatus utrumq, petat tam jus quàm seysinam, quod quidem per tale breve facere non potest. Recurrendum est igitur ad breve de recto quod utrumq, determinat & amplectitur. Quod autem dictum est de fratre postnato petente & antenato tenente, dici debet de avunculo petente versus nepotem, et de nepote petente versus avunculum & alios remotiores hæredes fratris antenati vel postnati in linea recta descendente vel ascendente vel transversali, q contra ipsum non habet locum consanguinitas, cùm assisa mortis antecessoris locum non habeat infrà suos terminos inter fratres vel sorores, avunculum vel nepotem, quia jus non determinat.

4. Quid juris, si postnatus et propinquus petat versus remotum, sicut versus tertium fratrem.

Dictum est q non jacet assisa inter hæredem propinquiorem & propinquum, quicunq, eorum tenens fuerit vel petens: videndum erit quid juris, si propinquus hæres petat versus propinquum, ubi pares sunt in jure possessorio cum hærede propinquiore, scilicet ubi duo fratres postnati vivente primogenito unus petat versus alium per assisam. Et sciendum q assisa non procedit inter eos duplici ratione, tum quia quilibet eorum habet paritatem juris in possessione, tum quia frater antenatus (qui habet jus merum) propinquior est hæres, nec potest aliquis esse hæres propinquior nisi ille ad quem jus merum descendit, sive sit unus sive

f. 283.

would be grievous for the claimant upon such a recent seysine. But if the elder-born brother has first put himself into seysine, and the younger-born claims against him by an assise or by a writ of cosinage, to which the elder-born may answer, that he ought not to answer to that writ for the reason above stated, because since by such a writ nothing is claimed except only the seysine, and the seysine is conjoined with the right in his person, and the seysine in this case cannot be separated by itself from the right, since it ought to follow the right in descent, it is incumbent that the younger-born should claim the right as well as the seysine, which he cannot easily do by such a writ. Recourse therefore must be had to a writ of right, which determines and embraces all. But what is said concerning a younger-born brother as tenant and an elder-born as claimant, ought to be said of an uncle claiming against a nephew and of a nephew claiming against an uncle and other more remote heirs of an elder-born or a younger-born brother in a right line descending or ascending or transverse, that a writ of cosinage has no place against him, since an assise of mort-dancester has no place within its limits between brothers and sisters, an uncle or a nephew, because it does not determine the right.

4. What is the right, if a younger born and near heir claims against a remote heir, as against a third brother. f. 283.

It has been stated that an assise does not lie between a next heir and a near heir, whichever of them be the tenant or the claimant, it will have to be seen what is the right, if a near heir claims against a near heir, where they are peers in possessory right with a next heir, to wit, where two younger-born brothers during the lifetime of the firstborn claim one against the other by an assise. And it is to be known that an assise does not take place between them for a double reason, as well because each of them has a parity of right in possession, as because the elder-born brother (who has the absolute right) is the next heir, nor can any one be the next heir but he to whom the absolute right descends, whether he be

plures. Nec erit in personis hæredum propinquorum recurrendum ad breve de recto, quia ad nullum ipsorum descendit jus merum, & cùm in personis eorum non habeat locum assisa, ita nec consanguinitas, nec in personis hæredum ex illis provenientium. Item cùm locum non habeat inter propinquos, locum non habebit inter propinquum & remotum, sive remotissimum, nec est igitur consanguinitas. Contra extraneas verò personas possunt consanguinei petere per assisam de seysina antecessorum suorum, & in gradibus ad quos assisa mortis antecessoris se non extendit, petere possunt per breve de consanguinitate, quatenus tempus permiserit & probatio, ut prædictum est.

5. Quid juris, si warrantus vocetur frater, videlicet postnatus, et warrantizaverit.

Sed esto quòd, cùm conjuncta persona frater medius vel postnatus in seysina fuerit hæreditatis à communi stipite descendentis, et totam vel ejus partem transferat ad extraneum, & frater antenatus & propinquior assisam portaverit super tenentem, & ille warantum vocaverit fratrē postnatum & ipse warantizaverit, videtur prima facie quòd cadere debeat assisa, quasi pervenerit ad eum casum sicut inter fratrem antenatum hæredem propinquiorem & postnatum hæredem ꝑpinquum, & q procedi debeat per breve de recto, ac si assisa venisset super fratrem postnatum & qui inventus esset in seysina. Sed esto quòd cùm frater postnatus vel consanguineus vocetur ad warantum defaltam faciat; nonne erit assisa capienda per defaltam in persona tenentis? immò. Et eodem modo cùm warantizatum fuerit, si tenens defendi non possit in seysina, petens de seysina tenentis recuperabit, & tenens excambium de waranto. Sed revera non cadit assisa secundùm quosdā, quia tenens, licet ei wa rantizatum

one or several. Nor will recourse have to be had in the persons of the near heirs to a writ of right, because the mere right has descended to none of them, and since an assise has no place in their persons so neither a writ of cosinage, nor in the persons of the heirs springing from them. Likewise since it has not a place between near heirs, it will not have a place between a near and a remote heir or a most remote heir, nor is there therefore cosinage. But against strangers in blood cousins may claim by an assise upon the seysine of their ancestors, and in degrees to which an assise of mortdancester does not extend, they may claim by a writ of cosinage, as far as time and the proof will permit, as has been said above.

5. What is the right, if a brother, to wit, the younger-born, is called to warrant and has warranted.

But let it be that when a blood-relation an intermediate or younger-born brother has been in seysine of an inheritance descending from a common stock, and transfers the whole or a part of it to a stranger in blood, and the elder-born brother as next heir has brought an assise against the tenant, and the latter has called the younger-born brother as a warrantor and he has warranted the transfer, it seems at first sight that the assise ought to fall, as if it had arrived at a case between an elder-born brother the next heir and a younger-born brother a near heir, and that the proceeding ought to be by a writ of right, as if the assise had come upon the younger-born brother who had been found in seysine. But let it be that when the younger-born brother or cousin is called to warrant he makes default, will not the assise have to be taken by default in the person of the tenant? Certainly. And in the same manner when the warranty to him has been fulfilled, if the tenant cannot be maintained in seysine, the claimant shall recover from the seysine of the tenant, and the tenant shall have compensation from the warrantor. But in truth the assise does not fall according to some, because the tenant, although the warranty to him has been fulfilled,

sit, non recedet à seysina, sed warantus eũ defendere tenetur in seysina sua, & ideò à tenente non est translata seysina, & ideò procedit assisa, nisi warantus respondere possit ad assisam & docere quare procedere non debeat, fit tamen contrarium quandoque.

CAP. III.

1. De exceptionibus contra breve.

Contra breve de consanguinitate in suo casu responderi poterit & excipi, sicut contra assisam mortis antecessoris: ut si excipiatur q̧ breve de consanguinitate non jacet, quia sunt cohæredes & q̧ hæreditas descendat ab uno stipite, & q̧ sanguinitas non jaceat magis quàm assisa, responderi poterit ad hoc à petente, q̧ tenens non est in seysina ut hæres communis antecessoris, sed ex causa donationis à communi antecessore vel ab alio, & q̧ donatio minùs sufficiens est, quia talis nunquam seysinam habuit in vita donatoris, sed q̧ donator inde obiit seysitus ut de feodo, & per hoc tenebit breve & cadet assisa, sed vertetur in juratam ad inquirendum de feoffamento & seysina. Item responderi poterit, quòd ille qui in seysina est, non est cohæres sed extraneus, licet filius legitimus, propter coarctationem hæredum, quia terra data fuit in maritagium cum matre petentis cum tali viro & hæredibus eorum cōmunibus, & ille qui tenet est de altero viro, f. 283 b. licet de eadem matre, & cohęres esse non poterit nec propinquus nec remotus, propter coarctationem hæredum. Sed si dicatur quòd tenens bastardus sit vel villanus, ita quòd hæres esse non possit, ibi cadit consanguinitas sicut caderet assisa: quia talis objectio

shall not withdraw from the seysine, but the warrantor is bound to maintain him in his seysine, and therefore the seysine is not transferred from the tenant, and therefore the assise proceeds, unless the warrantor can answer to the assise and show cause wherefore it ought not to proceed, the contrary however is sometimes done.

Chapter III.

1. Of exceptions against the writ.

Against a writ of cosinage in its own case answers and exceptions may be made, as against an assise of mortdancester, as if it be excepted that a writ of cosinage does not lie, because they are coheirs and that the inheritance descends from one stock, and that a writ of cosinage does not lie any more than an assise, it may be answered to this by a claimant, that the tenant is not in seysine as the heir of a common ancestor, but by reason of donation from a common ancestor or from some other person, and that the donation is not sufficient, because such person never had the seysine in the lifetime of the donor, and that the donor died seysed thereof as of fee, and through this the writ shall hold good, and the assise shall fall, and it shall be turned into a jury to inquire concerning the feoffment and the seysine. Likewise it may be answered that he who is in seysine, is not a coheir but a stranger in blood, although a legitimate son, on account of the limitation of the heirs, because the land was given as a marriage portion with the mother of the claimant with a certain husband and to their common heirs, and he who holds the estate is by another husband, although by the same mother, and cannot be a coheir nor a near heir nor a remote heir, on account of the limitation of the heirs. But if it be said that the tenant is a bastard or a villein, so that he cannot be an heir, thereupon the writ of cosinage falls just as an assise would fall, because such

f. 283 b.

pertinet ad jus. Et unde si ille, cui objicitur bastardia, se probare possit legitimum, vel ille, cui servitus objicitur, probare se possit esse liberum, per hoc terminabitur negotium tam super jure quàm super proprietate, quod quidem fieri non poterit per breve de consanguinitate, nō magis quàm per assisam, quod non est in casibus præcedentibus, quia sicut[1] in causa possessionis se probaverit legitimum vel liberum, non propter hoc se probat hæredem propinquiorem, & ideò recurrendum erit ad breve de recto cùm hoc tangat jus merum. Item dicere possit quòd antecessor non obiit seysitus ut de feodo, vel si obiit seysit9 ut de feodo, tamē ille qui petit p breve de cōsanguinitate non est in tali gradu vel linea, q aliquid ei descendere possit ratione alicujus propinquitatis, quia ex fratre talis antecessoris postnato. Et ut breviter concludatur, omnes ferè exceptiones quæ competunt contra assisam mortis antecessoris, competunt contra breve de consanguinitate, cùm sapiat naturam assisæ. Item per breve de consanguinitate possunt plures petere sicut unus, & contra plures sicut contra unum, sicut in assisa. Item poterit assisa conjungi cum consanguinitate & per unicum breve terminari, ut si soror petat de morte vel seysina patris vel matris, & nepos & neptis ex sorore vel ulteriùs. Ut si dicatur s. A. pater vel mater B. & avus vel avia, proavus vel proavia C. cujus hæredes ipsi B. & C. sunt, fuit seysitus in dominico suo ut de feodo &c. Et forma brevis ut superiùs in principio, et qualiter per hoc breve pcedendum sit, & qualiter contra breve excipiendum, satis ex præmissis sumi poterit exemplum.

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[1] "quia si quis," MS. Rawl. C. 160.

an objection strikes at the right. And hence if he, to whom bastardy is objected, can prove himself to be legitimate, or he to whom servitude is objected, can prove himself to be free, thereby the affair shall be terminated as well upon the right as upon the property, which cannot be done by a writ of cosinage, no more than by an assise, which lies not in the preceding cases, because if in a cause of possession he has proved himself to be legitimate or free, he does not on that account prove himself to be the next heir, and therefore recourse must be had to a writ of right, since this touches the absolute right. Likewise he may say that his ancestor did not die seysed as of fee, or if he died seysed as of fee, nevertheless he who claims by a writ of cosinage is not in such grade or line, that any thing can descend to him by reason of any nearness of kin, because he is from a younger-born brother of such an ancestor. And that it may be briefly concluded, almost all the exceptions which are applicable against an assise of mortdancester, are applicable against a writ of cosinage, since it savours of the nature of an assise. Likewise by a writ of cosinage several may claim just as one person, and against several just as against one person, as in an assise. Likewise an assise may be coupled with a writ of cosinage, and may be terminated through a single writ, as if a sister claims upon the death or seysine of her father or of her mother, and the nephew or the niece out of the sister, or further. As if it be said, to wit, A. the father or the mother of B., and the grandfather or the grandmother, the great-grandfather or the great-grandmother of C., whose heirs the said B. and C. are, was seysed in demesne as of fee &c. And the form of the writ is as above in the beginning, and in what way proceedings are to be taken through this writ, and in what way exceptions are to be taken against the writ, a sufficient example may be derived from what has been said above.

Cap. IV.

1.
An breve de consanguinitate verti possit in breve de recto.

Item videndum est an breve de consanguinitate verti possit p narrationem in breve de recto, sicut potest per[1] breve de ingressu in breve de recto, vel econtrario. Ut si dicat petens p breve de consanguinitate in narratione descensus: Et unde talis antecessor suus obiit seysitus in dominico suo ut de feodo, & postea adjiciat, & de jure. Videtur (et verum est) q sic transeat de possessione in ꝓprietatem, p hoc enim q dicit q talis obiit seysitus in dominico suo ut de feodo, deducit in judicium totum jus possessionis. Et de hoc q addit de jure, deducit in judicium jus proprietatis, et sic per consequens duo jura, possessionis viz. et proprietatis, s. jus duplicatum, quod dicitur *Dreit dreit.* Sed quia breve de consanguinitate nihil determinare potest nisi jus possessorium, et petens in narratione sua ulteriùs procedit ad jus merum, ad quod consanguinitas se non extendit non magis quàm assisa mortis antecessoris, per hoc recedit de brevi suo, & cadit breve et non erit recurrendum postea nisi ad breve de recto. Nunquam enim vertitur causa possessionis in causam proprietatis per narrationem ex parte petentis ut hîc, nec e converso. Poterit enim quis habere liberum teñtum sine usu & expletiis. Et unde si quis ejectus fuerit de tali seysina & per assisam novæ disseysinæ petat restitui, nihil aliud dicit in intentione sua nisi quod disseysitus est de libero tenemento suo. Eodem modo si seysinam petat antecessoris per assisam mortis, nihil aliud dicit nisi quòd antecessor suus seysitus fuit in dominico suo ut de feodo die quo obiit. Et unde si mentionem faceret de expletiis captis & de jure mero, sic dicendo per assisam novæ disseysinæ, de libero tenemento meo unde fui seysitus ut

Britton, iii. ch. xxvi. § 6.

f. 284.

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[1] "per," omitted MS. Rawl. C. 160.

Chapter IV.

1. Whether writ of cosinage can be turned into a writ of right.

Likewise it is to be seen whether a writ of cosinage may be turned by the statement into a writ of right, as a writ of entry may be turned into a writ of right, or the contrary. As if the claimant by a writ of cosinage should say in the statement of his descent, and hence such his ancestor died seysed in demesne as of fee, and should afterwards add, and of right. It seems (and it is true) that thus the transition is made from possession to property, for when he says that such a person died seysed in demesne as of fee, he brings into judgment the whole right of possession. And when he adds the words "and "of right," he brings into judgment the right of property, and so consequently two rights, to wit, of possession and of property, to wit, a duplicate right, which is called *Dreit dreit.* But because a writ of cosinage can determine nothing except the possessory right, and the claimant in his statement proceeds further to the absolute right, to which a writ of cosinage does not extend any more than an assise of mortdancester, he thereby recedes from his writ, and the writ falls, and recourse shall not be had to anything afterwards but to a writ of right. For a cause of possession is never turned into a cause of property by the statement on the part of a claimant as here, nor conversely. For a person may have a free tenement without the use and the profits, and hence if a person be ejected from such seysine, and seeks to be restored by an assise of novel disseysine, he says nothing in his declaration except that he has been disseysed from his freehold. In the same way if he claims the seysine of his ancestor by an assise of mortdancester, he says nothing else than that his ancestor was seysed in his own demesne as of fee on the day on which he died. And hence if he makes mention of taking profits and of the absolute right, saying thus in an assise of novel disseysine, "from my free- "hold of which I was seysed as of a freehold as of right in

f. 284.

de libero tenemento ut de jure, capiendo expletia ad valentiam &c. vel in assisa mortis antecessoris sic dicendo, in dominico suo ut de feodo & jure, capiendo expletia ad valentiam &c., sic caderet breve propter jus merum, ut supra dictum est. Et unde videtur manifestè, quòd jus possessorium satis stare posset sine usu et expletiis, quæ tamen si intervenerint prodesse poterint et non nocere, cùm præbeant vestimenta possessioni et jus possessorium declarent. Et vice versa breve de recto nunquam vertitur per narrationem ad breve prædictum super possessione, in hoc enim proprietas et possessio nihil habent commune. Si quis enim semel cum effectu agere inceperit p breve de recto super ipso jure, nunquam redire poterit ad aliquā actionem super ipsa possessione, vel si in narratione sua aliquem articulum omittat qui locum habeat super ipso jure, et si dicat tantū in narratione sua: Et unde talis antecessor suus seysitus fuit in dominico, vel si loquatur de seysina ꝑpropria, et dicat: Et unde seysitus fui ut de libero tenemento vel in dominico ut de libero tenemento: nisi mentionem faciat de jure et de tempore regis, et de expletiis captis, non valebit: et unde videtur manifestè, quòd jus ꝑprietatis stare non possit sine usu et expletiis, sicut poterit jus possessionis, ut prædictum est. Relinquitur igitur quòd nulla istarum actionum verti possit in aliam per narrationem. In jure autem proprietatis vertitur quandoq; breve de ingressu in breve de recto (ꝑpter longissimum ingressum) de necessitate, quia non poterit quis probare ingressum de visu ꝑprio et auditu, et vice versa vertitur quandoq; breve de ingressu in breve de recto, sed non nisi de voluntate tenentis, cùm tempus hoc permiserit quòd probari possit ingressus de visu alicujus et auditu, secundùm quod inferiùs dicetur pleniùs de ingressibus.

Britton, ib. § 7.

" taking profits to the value, &c." or in an assise of mortdancester saying thus, " in his own demesne as of " fee and of right, in taking profits to the value &c.," the writ would in such case fall on account of the absolute right as said above. And hence it seems manifestly that the right of possession can stand sufficiently without the use and profits, which however if they have intervened, may be of service and not do harm, since they furnish clothing to the possession and declare the possessory right. And conversely a writ of Right is never turned by the statement into a writ as above mentioned concerning the possession, for in this the property and the possession have nothing in common. For if any one has once begun to proceed effectively by a writ of right upon the right itself, he will never be able to return to any action upon the possession itself, or if in his statement he omits any article which should have place upon the right itself, and if he should only say in his statement " and hence such " his ancestor was seysed in demesne," or if he should speak of his own seysine and should say, " and hence I " have been seysed as of a freehold, or in demesne as of a " freehold," unless he shall make mention of the right, and the time of the king and of taking profits, it shall not avail: and hence it appears manifestly that the right of property cannot stand without the use and profits, as the right of possession may stand, as said above. It remains therefore that none of those actions can be turned into another through means of the statement. But in the right of property a writ of entry is sometimes turned into a writ of right (on account of a very long entry) of necessity, because a person cannot prove entry by his own sight and hearing, and conversely sometimes a writ of entry is sometimes turned into a writ of Right, but only with the willingness of the tenant, when the time permits this, that the entry can be proved by the sight and hearing of some person, according to what will be more fully discussed below concerning entries.

Cap. V.

1. Breve de seysina antecessoris, qui obiit de communia pasturæ seysitus.

Si quis moriatur seysitus de aliqua communia pasturæ ut de feodo, et pertinentem ad liberum tenementum suum ex fundo alieno, seysinam suam quam habuit die quo obiit transmittit ad hæredes suos. Et si hæres cùm in seysina fuerit uti prohibeatur, non competit ei assisa mortis antecessoris cùm sit quasi in jure possessionis, licet uti prohibeatur, et pro eo quòd uti prohibitus est, de beneficio principis subvenitur ei per breve quod tale est, per juratam et non per modum assisæ. Forma brevis talis est.

2. Forma brevis ubi quis moritur seysitus de communia pasturæ, si seysina deforcietur hæredi, et de consanguinitate.

f. 284 b.

Rex vic. salutem. Præcipe tali, quòd justè et sine dilatione permittat talem habere communiam pasturæ suæ in terra sua de tali villa, de qua talis pater vel mater, avunculus vel amita, frater vel soror vel etiā antecessor avus vel proavus &c. vel consanguineus vel consanguinea, qui omnes dici possunt antecessores meritò, eo quòd hæredem antecedunt in jure possessorio. Et unde cùm prædictus talis (cujus hæres ipse vel ipsa est) fuit seysitus vel seysita ut de feodo tanquam pertinente ad liberum tenementum suum in eadem villa vel in alia, die quo obiit ut dicit. Et nisi fecerit, & idem talis fecerit te securum &c., tunc summoneas per bonos summonitores prædictum talem quòd sit coram justiciariis nostris ad primam assisam cum in partes illas venerint ostensurus quare non fecit, & habeas ibi summonitores & hoc breve. Quod autem dictum est de hærede, dici poterit de successore alicujus, sicut de rectore alicujus ecclesiæ cujus prædecessor obiit seysitus de aliqua communia pasturæ tanquam pertinente ad ecclesiam suam. Forma brevis talis est.

CHAPTER V.

1. A writ concerning the seysine of an ancestor, who has died seysed of common ot pasture.

If any one dies seysed of a certain common of pasture as of fee, and appertaining to his freehold from another persons ground, he transmits to his heirs his seysine, which he had on the day on which he died. And if his heir, when he is in seysine, be prohibited from using it, he is not entitled to an assise of mortdancester since he is as it were in the right of possession, although he is prohibited from using it, and in respect of that which he is prohibited to use, he is by the beneficence of the prince assisted by a writ, which is of this kind, by a jury and not by means of an assise. The form of the writ is of this kind.

2. The form of a writ, f. 284 b. when a person dies seysed of common of pasture, if the heir be disturbed in his seysine and concerning cosinage.

The king to the viscount greeting. Enjoin so-and-so that justly and without delay he should permit so-and-so to have common of pasture on his land in such a vill, of which such person's father or mother, uncle or aunt, brother or sister, or even an ancestor grandfather or great-grandfather &c., or a male or female cousin, who may be all deservedly called ancestors, inasmuch as they precede the heir in possessory right. And whereof when so-and-so aforesaid (whose heir he or she was) was seysed as of fee, as appertaining to his free tenement in the same vill or in another on the day on which he died as he says. And unless he has done so and the said so-and-so has given you security &c., then summon by good summoners so-and-so aforesaid that he be present before our justiciaries at the first assise when they have come into those parts, in order to show wherefore he has not done it, and have there the summoners and this writ. But what has been said of an heir may be said of the successor of any one, as of the rector of a certain church whose predecessor died seysed of a certain common of pasture as it were appertaining to his church. The form of the writ is of this kind.

3. Forma brevis de recto.

Rex vicecomiti salutem Præcipe A. quòd justè & sine dilatione permittat A. rectorem talis ecclesiæ habere communiàm pasturæ suę in terra sua de tali villa, de qua B. prædecessor suus quondam rector ejusdem ecclesiæ fuit seysitus tanquam pertinente ad ecclesiam suam talem die quo obiit ut dicit, & nisi fecerit, sum̃ &c. ut supra. Illud idem breve locum habere posset (ut videtur) in personis omnium aliorum, qui petere possunt terras, tenementa, & jura nomine ecclesiæ suæ, de quibus possessores sui obierint seysiti ut de jure eeclesiæ suæ: ut archiepiscopi, episcopi, abbates, priores, canonici de ecclesiis præbendatis & alii ecclesiarum rectores, nescio rationem quare non, cùm ubiq; sit eadem ratio. Ad diem vero sum̄onitionis poterit se deforcians essoniare si voluerit, si autem defaltam fecerit (secundùm quosdam) procedendum erit propter defaltam, ut capiatur pastura in manum domini regis, ac si actio esset realis, quod quidem esse non deberet (ut videtur), cùm actio potiùs sit personalis quàm realis, & ita potiùs locum habeat attachiamentum quàm captio. Sed sive sic sive non sic, qualiter procedi debeat, inferiùs satis apparebit. Sed qualitercunq; procedatur, per hoc breve nō pervenitur ad causam proprietatis, cùm tantum locum habeat in causa possessionis, sicut superiùs videri poterit paulò ante. Et ad hoc breve responderi poterit multipliciter, sicut de assisa mortis antecessoris, & terminari poterit per juratam vel inquisitionem secundùm proposita & objecta.

Cap. VI.

1. De brevi quo warranto.

Est etiam aliud breve formatum ad querelam, quod aliquantulum & in parte sapit naturam brevis mortis antecessoris, & in parte novæ disseysinæ, & quod extra

The king to the viscount greeting. Enjoin A. that justly and without delay he should permit A. the rector of such a church to have common of pasture on his land in such a vill, of which B. his predecessor formerly rector of the same church was seysed as appurtenant to his said church on the day on which he died, as he says, and unless he shall do so, summon &c. as above. The very same writ may have place (as it seems) in the persons of all others who can claim lands, tenements, or rights in the name of their church, of which their predecessors died seysed as in right of their church; as archbishops, bishops, abbots, priors, canons of prebendal churches, and other rectors of churches, nor do I know any reason wherefore not, since there is everywhere the same reason. At the day indeed of the summons the disseysor may essoin himself if he wishes, but if he has made default (according to some) proceedings will have to be had on account of the default, that the pasture may be taken into the hand of the king, as if it was a real action, which indeed ought not to be (as it seems), since the action is rather a personal than a real action, and so an attachment should rather take place than a seizure of property. But whether it be so or not, how proceedings ought to be had, will appear sufficiently below. But in whatever way proceedings be taken, the parties do not arrive by this writ to a cause of property, since it has only a place in a cause of possession, as may seen above a little before. And to this writ an answer may be given in manifold ways, as to an assise of mortdancester, and it may be determined by a jury or an inquest according to what is propounded and objected.

3. The form of a writ of right.

CHAPTER VI.

There is also another writ formed to meet the complaint, which in some slight degree and in part savours of a writ of mortdancester, and in part savours of novel

1. Of the writ of Quo warranto.

Britton, l. i. ch. xx. § 1.

com̃ terminari poterit sine præjudicio communis libertatis, quod tale est. Si A. filius B. fecerit te securum &c. tunc summone per bonos summonitores C. quòd sit &c. ad ostendendum quo waranto se teneat in tanta terra cum pertinentiis in tali villa, quam prædictus B. pater ipsius A. (cujus hæres ipse est) in curia nostra &c. nuper recuperaverit versus eundem C. per assisam novæ disseysinæ inde ibi inter eos captam, & de qua prædictus B. fuit seysitus ut de feodo, die quo obiit, ut dicitur. Et illud idem esse poterit de communia pasturæ sic: ad ostēdendum quare non permittit talem habere communiam pasturæ suæ in terra sua in tali villa, quàm talis antecessor suus (cujus hæres ipse est) nuper in curia nostra &c. recuperavit versus talem per assisam novę disseysinę tanquam pertinentem ad tenementum suum de tali villa, & de qua prædictus talis antecessor suus fuit seysitus ut de feodo die quo obiit, ut dicitur. Et idem dici poterit de quolibet rectore & de quolibet successore, & habeas ibi &c. Teste &c.

f. 285.

Cap. VII.

1. Si damna veniunt in judicium in assisa mortis antecessoris.

Cum autem petens per assisam recuperaverit, videndum erit an damna veniant in judicium in assisa mortis antecessoris. Revera hucusq; venire non consueverunt, sed ad reprimendam malitiam dominorum capitalium, bonum est quòd veniant propter vastum & destructionem. Sed videndum utrum dominus capitalis vastum fecerit vel destructionem, vel alius qui se intruserit, vel titulum habuerit & warantum. Si autem dominus capitalis, tunc refert utrum tempore quo tenens suus & hæres fuerit infrà ætatem & in custodia sua, vel plenæ ætatis, cùm dominus suus se in seysi-

disseysine, and which may be determined beyond the county without prejudice to the common liberty, which is of this kind. If A. the son of B. has given you security &c., then summon by good summoners C. that he be present &c. to show by what warrant he keeps himself in so much land with its appurtenances in such a vill, which the aforesaid B. the father of the said A. (whose heir he is) in our court &c. lately recovered against the said C. by an assise of novel disseysine, there held between them thereon, and of which the aforesaid B. was seysed as of fee, on the day on which he died, as it is said. And the same thing may be done concerning common of pasture thus; to show wherefore he does not permit so-and-so to have common of pasture on his land in such a vill, which so-and-so his ancestor (whose heir he is) lately in our court &c. recovered against such a person by an assise of novel disseysine, as appertaining to his tenement in such a vill, and of which so-and-so aforesaid his ancestor was seysed as of fee on the day on which he died, as it is said. And the same may be said concerning any rector and concerning any successor, and have there &c. Witness &c. f. 285.

Chapter VII.

1. If damages come into judgment in an assise of mort-dancester.

But when the claimant has recovered by an assise, we must see whether damages come into judgment in an assise of mortdancester. In truth they have not been accustomed hitherto to come into judgment, but to repress the malice of chief lords it is good that they should come into judgment on account of waste and destruction. But it is to be seen whether a chief lord has caused waste or destruction, or another person who has intruded himself, or who had a title and a warrantor. But if a chief lord, then it matters whether at the time his tenant and the heir was under age and in his guardianship, or of full age, when his lord has put himself into

nam posuerit, ut habeat primam assisam. Si autem nondum fuerit[1] infrà ætatem & sit aliquis parens vel amicus qui de vasto sequatur pro minore, & de vasto constiterit per inquisitionem vel per visum, dominus vastum emendabit, sic quòd damna restituet, sive vastum fecerit ante prohibitionem sive post, & custodiam amittet per judicium ad minus ea vice: ut inter placita quæ sequebantur regem coram W. de Ralegh in comitatu Hunt̃ de Johanne de Daco & filio Radulphi[2] de Bray. Si autem hæres sit plenæ ætatis & in seysina, & dominus capitalis se ponat in seysinam cum eo ratione primæ seysinæ, si tunc faciat vastum & destructionem, competit hæredi assisa novæ disseysinæ, licet à tenemento non expellatur, saltem ut pacem habeat & liberè teneat, recuperare possit per assisam cum restitutione damnorum: simplex enim seysina conceditur domino, ut ad dominum recognoscatur, & nullum vastum nec destructio. Si autem dominus capitalis vacuam invenerit possessionem, & cùm se posuerit in seysinam verum hæredem non cognoscat ad hæredem per malitiam, ut destructionis & vasti faciendi liberiorem habeat facultatem, si vastum fecerit, & hæres sibi per assisam perquisiverit, dominus capitalis damna restituet cum ipsa res,[3] cùm magis deliquerit quàm si vastum fecerit, dum hæres esset infrà ætatem. Si autem cùm dominus capitalis in seysina fuerit nomine hæredis aliquo modorum prædictorum alium feoffaverit, sive hæres sibi perquisiverit per assisam mortis antecessoris sive novæ disseysinæ, semper venient damna in restitutionem cum ipsa re, prædictis rationibus.

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[1] "non fuerit," MS. Rawl. C. 160.

[2] "filia Radulphi," MSS. Rawl. C. 160 and C. 159.

[3] "ipsa re," MS. Rawl. C. 160.

seysine, that he might have the first assise. But if the tenant was under age and there is any relation or friend who will sue for the waste on behalf of the minor, and waste has been established by an inquest or by a view, the lord shall make good that waste, so that he shall restore the losses, whether he has caused the waste before the prohibition or after it, and he shall lose the guardianship by a judgment at least on that account: as amongst the pleas which follow the king, before William de Ralegh in the county of Huntingdon, concerning John de Daco and the son of Ralph de Bray. But if the heir be of full age, and in seysine, and the chief lord puts himself into seysine with him on the ground of a first seysine, if he then causes waste and destruction, the heir is entitled to an assise of novel disseysine, although he be not expelled from the tenement, at least that he may have peace and have a free holding, and he may recover his seysine by an assise with the restitution of his losses, for simple seysine is allowed to the lord that he may be acknowledged as lord, but no waste nor destruction. But if the chief lord has found the possession vacant, and when he has put himself into seysine he does not acknowledge the true heir as the heir through malice, that he may have a freer faculty of destruction and causing waste, if he has caused waste, and the heir by an assise has sued for damages, the chief lord shall restore the losses with the estate itself, since he has committed a greater misdemeanor than if he had caused waste, whilst the heir was under age. But if, when the chief lord has been in seysine in the name of the heir, in any of the aforesaid modes he has enfeoffed another, whether the heir shall have prosecuted a claim for himself by an assise of mortdancester or by an assise of novel disseysine, the losses shall always come into restitution with the estate itself for the aforesaid reasons.

TRACTATUS QUINTUS

LIBRI QUARTI,

IN QUO TRACTATUR

DE ASSISA UTRUM.[1]

Cap. I.

1. Utrum tenementum sit libera eleemosyna.

Britton, iv. ch. vii. § 1.

Est autem inter alias assisas quædam assisa quæ multum habet possessionis & juris, quæ utrūq, terminat, possessionem s. et jus, nec ulteriùs quæritur de jure post talem assisam, sive faciat pro tenente sive pro petente, quamvis aliquando (si juratores malè juraverint) agi possit de perjurio et de convictione inter eos, inter quos capitur assisa. Jus autem aliorum, qui majus jus habent, non determinat, quia agi poterit iterum de jure mero, quamvis priùs actum sit de jure simulato, sicut fuit coram rege apud Woodstocke de rectore ecclesiæ beatæ Mariæ Oxoñ successore Wilhelmi Hardel, ut infrà dicetur & ponetur casus. Per assisam istam recognoscitur, utrum tenementum de quo agitur laycum sit feodum tenentis vel libera eleemosyna pertinens ad ecclesiam alicujus rectoris, sive petens laycus sit sive clericus, quia in utriusq, psona locū habere debeat, sicut primò fuit observatum tempore M. de Pateshull & postea ab eodem prohibitum, & quòd locum non haberet nisi tantum in persona

[1] "Incipit Tractatus Quintus libri Quarti de Assisa Utrum," MS. Rawl. C. 160.

THE FIFTH TREATISE

OF

THE FOURTH BOOK,

WHICH TREATS OF

THE ASSISE OF UTRUM.

CHAPTER I.

1. Whether the tenement be frankalmoigne.

But there is amongst other assises a certain assise which partakes much of possession and of right, which determines both, the possession, to wit, and the right, and after this assise there is no further question respecting the right, whether it makes for the tenant or for the claimant, although sometimes (if the jurors have sworn ill) proceeding may be had for perjury and for conviction between those between whom the assise is taken. But it does not determine the right of others, who have the greater right, because proceedings may be had again concerning the absolute right, although previous proceedings have been had respecting the feigned right, as took place before the king at Woodstocke concerning the rector of the church of the Blessed Virgin Mary at Oxford the successor of William Hardel, as will be said below and the case will be stated. By this assise it is recognised, whether the tenement concerning which the proceedings are taken is a lay fee of the tenant or free alms appertaining to the church of some rector, whether the claimant be a layman or a clerk, because it ought to have place in the person of either, as was first observed in the time of Martin de Pateshull, and afterwards was prohibited by him, and which would not have a place except

rectoris, cui nullum aliud competit remedium nec breve, nisi agere posset de seysina sua propria. Layco verò competere possent omnia alia remedia, s. breve de nova disseysina, mortis antecessoris, de ingressu, & de recto. Sed cùm restringendæ sunt lites potiùs quàm laxandæ, ut vitentur duella & magnæ assisæ, & placitum maturiùs terminetur, oportet hodie quòd breve istud & assisa locum teneat in persona utriusq;, tam layci quàm rectoris, secundùm quod olim fuit observatum: ut de itinere abbatis de Rading & M. de Pateshull in com̃ Wygorñ, assisa utrum unum mesuagium, & quòd locum non haberet postea nisi tantum in persona rectoris, secundùm quod inveniri poterit in ultimo itinere M. de Pateshull in comitatu Suff. anno regni regis H. 10. secundo, de Roberto de Bedentone & Wilhelmo de Valle, & ubi Robertus cognovit quòd nunquam fuit in seysina terræ petitæ. Et videndum est inprimis quibus rectoribus, et quarum ecclesiarum, et de quibus tenemẽtis locum habeat assisa, & de qua libera eleemosyna. Quia ecclesiarum alia cathedralis, sicut episcoporum, alia regularis sicut abbatum & priorum, alia parochialis sicut ecclesiarum rectorum, et ideò videndum quibus ex prædictis competit assisa. Et sciendum quòd tantum rectoribus ecclesiarum parochialium, qui instituti sunt per episcopos & ordinarios ut personæ. Item dici possunt rectores, sicut sunt canonici de ecclesiis præbendatis. Item dici possunt rectores vel quasi, abbates, priores et alii qui habent ecclesias ad proprios usus. Et hoc intelligendum est tam de illis qui medietatem habent alicujus ecclesiæ quæ dividitur in duas partes, ratione duorum feodorum et ratione duorum patronorum, quia quilibet per se, si jura & res habeant separatas, per se et sine alio placitare poterit

f. 286.

only in the person of the rector, who is entitled to no other remedy nor writ unless he could sue concerning his own seysine; but a layman is entitled to all other remedies, to wit, a writ of novel disseysine, of mortdancester, of entry, and of right. But since lawsuits are to be restrained rather than encouraged, that duels and great assises may be avoided and a plea be sooner terminated, it is incumbent in the present day that this writ and assise should have place in the person of each, the layman as well as the rector, according to what was formerly observed in the iter of the abbot of Reading and Martin de Pateshull, in the county of Worcester, an assise whether a messuage, and which would not have place afterwards except in the person of the rector, according to what will be found in the last iter of M. de Pateshull in the county of Suffolk in the twelfth year of the reign of king Henry, concerning Robert of Bedenton and William de Valle, and where Robert admitted that he never was in seysine of the land claimed. And it is to be seen in the first place for what rectors and of what churches and concerning what tenements the assise takes place, and concerning what free alms. Because one church is a cathedral, as of a bishop, another is a regular church of abbots and priors, another a parochial church as of church-rectors, and therefore we must see who of the aforesaid are entitled to an assise. And it is to be known that only the rectors of parochial churches are entitled, who have been instituted by bishops and by ordinaries as parsons. Likewise they may be called rectors, such as are canons of prebendal churches. Likewise abbots, priors, and others who have churches for their own uses, may be called rectors or as it were rectors. And this is to be understood as well of those who have the mediety of any church, which is divided into two parts, by reason of two fees, and by reason of two patrons, because each by himself, if they have separate rights and estates, may plead and be impleaded by himself and

f. 286.

et implacitari. Si autem sit aliqua res quæ sit vel esse debeat inter eos, aliud erit, ut de itinere W. de Ralegh in com̃ Leycestr̃ circa medium rotuli, et de termino S. Trinitatis anno regni regis H. 5, de Gerardo de Huwell et Richardo rectore medietatis ecclesiæ de Claypoll. Vicario autem nunquam competit assisa per se. Sed refert qualiter quis sit vicarius, ut si quis aliquam parvam pensionẽ solverit annuatim alicui domui religiosæ, sive hoc faciat nomine pensionis vel nomine simplicis beneficii, non propter hoc remanebit assisa in persona vicarii. Sed si hoc solvat privatæ personæ nomine pensionis, non competit assisa vicario sed personæ, aliquando tamen competit assisa utrique tam vicario quàm personæ simul, ut de ultimo itinere M. de Pateshull in com̃ Suff., assisa utrum una acra terræ &c. Item licet aliquando ecclesia divisa sit inter duos, sive bona habeant communia sive separata, dum tamen unicum habeant advocatum, nullus ipsorum sine alio placitare poterit vel implacitari: ut de eodem itinere M. de P. in com̃ Suff., anno regni regis H. 12, de libertate Eliens. inter Thomam personam ecclesiæ de Framesdon et Robertum filium Alrici. Forma brevis talis est: Rex vicecom̃ salutem. Si talis persona ecclesiæ talis fecerit te securum &c. tunc sum̃oneas per bonos sum̃onitores xii. liberos et legales homines de visineto tali, q sint coram justiciariis nostris ad primam assisam &c. parati sacramento recognoscere, utrum tantum terræ cum pertinentiis in tali villa sit libera eleemosyna pertinens ad ecclesiam ipsius talis de tali villa, an laycum feodum talis. Et hoc si pro rectore, si autẽ pro layco, tunc sic: Si talis laycus scilicet &c. ut

without the other. But if there be any estate which is or ought to be between them, it will be different, as in the iter of William of Ralegh in the county of Leicester about the middle of the roll, and in Holy Trinity term in the fifth year of the reign of king Henry, concerning Gerard de Huwell and Richard the rector of the mediety of the church of Claypoll. But a vicar is never entitled to an assise by himself. But it matters in what way a person is a vicar, as if a person has paid a little pension annually to a certain religious house, whether he does this in the name of a pension or in the name of a simple benefice, an assise shall not on that account rest in the person of a vicar. But if he pays this to a private person in the name of a pension, the person and not the vicar is entitled to an assise, sometimes however each is entitled to an assise together, the vicar as well as the person, as in the last iter of Martin de Pateshull in the county of Suffolk, an assise whether one acre of land &c. Likewise although sometimes a church is divided between two persons, whether they have the goods in common or separate, provided however they have a single advocate, neither of them can plead or be impleaded without the other, as in the same iter of Martin de Pateshull in the county of Suffolk, in the twelfth year of the reign of king Henry, concerning the liberty of Ely, between Thomas the parson of the church of Framesdon and Robert the son of Alric. The form of the writ is of this kind. The king to the viscount greeting. If such a parson of such a church has given you security &c., then summon by good summoners twelve free and loyal men of such a visne, that they be present before our justiciaries at the first assise &c. prepared on their oath to recognise, whether so much land with its appurtenances in such a vill is free alms belonging to the church of the said so-and-so of such a vill or is the lay fee of so-and-so. And this, if it is for the rector, but if it is for the layman, then thus; if such a layman, to wit, &c. as above, whether so much land

supra, utrum tantum terræ cū pertinentiis in tali villa sit laycum feodum ipsius talis in tali villa, an libera eleemosyna pertinens ad ecclesiam talem de tali villa. Et interim terram illam videant et nomina eorum imbreviari facias, et sum̄oneas per bonos summonitores prædictum talem qui terram illam tenet, quòd tunc sit ibi auditurus illam recognitionem, et habeas ibi sum̄ et hoc breve. Teste, &c.

Cap. II.

1. De modo procedendi et respondendi. Britton, iv. ch. viii.

Sum̄onitus autem, si ad diem sibi datum non venerit, nec se essoniaverit, tunc resum̄oneatur q sit ad alium diem, ut supra in assisa mortis antecessoris pleniùs. Si verò comparuerit, multipliciter respondere poterit contra assisam. Inprimis si error fuerit in impetratione ut supra. Item q ecclesia talis nunquam fuit inde in seysina aliqua, si clericus petat. Eodē modo respondere poterit clericus contra laycum, si laycus petat de disseysina sua ꝑpria vel alicujus antecessoris sui, cùm sine seysina petere non possit. Item dicere poterit q nunquam fuit in seysina in dominico, nisi tantum de servitio.

2. Ubi jacet hæc assisa, ubi non. f. 286 b.

Itē ad hoc q dicit (libera eleemosyna) videndum erit quæ & qualis sit ad hoc quòd procedat assisa, & utrum terra data sit ecclesiis parochialibus vel aliis supradictis, & si ecclesiis parochialibus, utrum sit libera vel magis libera, secundùm quod data fuerit in dotem tempore dedicationis vel alio tempore, & in quibus casibus locum habebit assisa. Et vocari poterit warantus tam à clerico quàm à layco, & fiat per omnia ut supradictum est de waranto vocato, ut supra de assisa mortis antecessoris. Si autem terra data fuerit ecclesiis cathedralibus vel conventualibus, non jacebit

with its appurtenances in such a vill is a lay fee of the said so-and-so in such a vill, or free alms belonging to the said church in the said vill. And meanwhile let them view the land, and cause their names to be inserted in the writ, and summon by good summoners so-and-so aforesaid, who holds that land, that he be there in order to hear that recognition, and do thou have there the summoners and this writ. Witness &c.

Chapter II.

1. Of the mode of proceeding and of answering.

But if the person summoned has not come on the day appointed to him, nor has essoined himself, then let him be re-summoned that he be there on another day, as above in an assise of mortdancester more fully. But if he has appeared, he may answer in manifold ways against the assise. In the first place, if there has been an error in the suing out as above. Likewise that the said church never was in seysine thereof, if a clerk is the claimant. In the same manner a clerk may answer against a layman, if a layman claims upon his own disseysine or upon the disseysine of some ancestor of his, since he cannot claim without seysine. Likewise he may say that he never was in seysine in demesne, but only in service.

2. Where this assise lies, and where not.

f. 286 b.

Likewise to this which he says "free alms," we must see what and of what kind it is for the purpose that the assise should proceed, and whether the land was given to parochial churches or to others afore described, and if to parochial churches, whether it is free, or more free, according as it has been given in dower at the time of its dedication, or at another time, and in what cases an assise will have place. And a warrantor may be called as well by a clerk as by a layman, and let it be done in all things as has been explained above respecting a warrantor who has been called, as above concerning an assise of mortdancester. But if the land has been given to cathedral or conventual churches, an assise shall not lie,

assisa, quamvis in liberam, puram & perpetuam eleemosinam; ut de termino P. anno regni regis H. 15, de correctione erroris R. de Leyliton[1] in itinere suo in com̃ Sussex de priore de Lewes & Gylberto de Aquila. Et quamvis hujusmodi terræ dentur in liberam eleemosinam, non solùm dantur ecclesiis sed & personis tenendæ in baronia, secundùm quod videri poterit per modum donationis, cùm dicitur: Talis dedit & concessit Deo & ecclesiæ tali, & tali priori & monachis ibidem Deo servientibus, vel tali episcopo vel successoribus suis talem terram in liberam, puram, & perpetuam eleemosinam &c. talibus quidem competunt omnia remedia quæ layco competerent, ut si fuerint in possessione & ejecti fuerint à seysina sua propria, assisa novæ disseysinæ, de seysina verò prædecessorum suorum breve de ingressu, & breve de recto. Et cùm habeant tales personæ omnia remedia generalia, quæ quidem laycus haberet, non habebunt recursum ad singulare beneficium, quod introductum est in favore alicujus singularis personæ terram petentis nomine ecclesiæ suæ, & quæ nihil clamare poterit nisi nomine ecclesiæ suæ, quia in ecclesiis parochialibus non fit donatio personæ sed ecclesiæ, secundùm quod perpendi poterit per modum donationis. Item videndum erit de seysina cujus personæ petatur terra in dominico per assisam, & refert qualiter fuit seysitus, utrum s. in dominico vel servitio. Item qualiter, utrum videlicet terra data fuerit ecclesiæ parochiali in liberam eleemosinam tenenda in dominico, vel tantum per servitium. Item utrum sic data fuerit feoffato, quòd omnino tenere debeat de ecclesia, vel quòd data sit ecclesiæ sub tali conditione, quòd ecclesia faciat feoffamentum tenendi de ecclesia, & secundùm hoc peti poterit servitium tantùm vel tenementum in dominico.

Britton, iv. ch. viii.

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[1] "R. de Lexingstone," M.S. Reg. 9. E. xv.

although it has been given for free, pure, and perpetual alms, as in Easter term in the fifteenth year of the reign of king Henry concerning the correction of the error of Robert de Leyliton in his iter in the county of Sussex, concerning the prior of Lewes and Gilbert de Aquila. And although lands of this kind may be given in free alms, they are not only given to the churches but also to the parsons to be held in barony, according to what may be seen by the mode of a donation, when it is said: Such a person has given and granted to God and to such a church and to such a prior and monks there serving God, or to such a bishop or his successors, such a land in free, pure, and perpetual alms, &c., such persons are entitled to all the remedies to which a layman is entitled, as if they have been in possession and have been ejected from their own proper seysine they are entitled to an assise of novel disseysine, and if they have been ejected from the seysine of their predecessors they are entitled to a writ of entry and a writ of right. And since such persons have all the general remedies which a layman would have, they shall not have recourse to the singular benefit, which has been introduced in favour of an individual parson claiming land in the name of his church, and who can claim nothing except in the name of his church, because in parochial churches a donation is made not to the parson but to the church, according to what may be inferred from the manner of the donation. Likewise we must see concerning the seysine of what person the land is claimed in demesne by an assise, and it is of importance in what way he was seysed, to wit, whether in demesne or in servitude. Likewise in what manner whether the land was given to the parochial church in free alms to be held in demesne, or only by a service. Likewise whether it was thus given to a feoffee, that he ought to hold it entirely from the church, or that it was given to the church under such a condition, that the church should make a feoffment of it to be held of the church, and according to this a service only can be

Si autem cùm quis ita feoffatus fuerit sibi & hæredibus suis tenendum de suo feoffatore, & pro habenda warantia & tuitione de ecclesia aliquem annuum redditum dederit ecclesiæ, hoc non debet dici servitium, immò quædam præstatio nomine eleemosinæ. In quo casu, nihil ampliùs peti poterit nec nomine eschaetæ nec alia ratione, & secundùm prædictam distinctionem de facili perpendi poterit, utrum persona justam causam habeat petendi in dominico tenementū vel tantùm servitium. Item videndum erit à quo terra sic data fuit ecclesiæ, s. an ab eo qui jus habet, an ab alio qui jus non habet: in quo casu vocari poterit warantus, secundùm quod fit in aliis placitis & assisis, & si warantus defaltam fecerit, procedatur ut suprà de waranto vocato in assisa mortis antecessoris.

3. Qualiter proceditur ad assisam.

f. 287.

Britton, ib. § 5.

Inter alias autem exceptiones & responsiones ex præmissis elici possunt exceptiones & replicationes, si partes voluerint. Si autem non sit warantus, nec exceptio quę pręponitur,[1] præsentibus in judicio partibus & juratoribus, procedat assisa in modum assisæ (secundùm quosdam), facta tamen expressione tenementi petiti propter visum quem juratores inde faciunt, secundùm quod fit in aliis assisis supradictis. Forma sacramenti in assisa ista est secundùm modum istum. Hoc auditis justiciarii quòd veritatem dicam de assisa ista, & de una virgata terræ cum pertinentiis, unde visum feci per præceptum domini regis, utrum videlicet prædicta terra cum pertinentiis sit libera eleemosyna pertinens ad ecclesiam talem unde talis est persona, an laycum feodum talis: vel vice versa secundùm quod persona assisam arramaverit, vel laycus: & pro nihilo omittam &c. Et secundùm istam formam sacramenti cùm assisa

[1] "proponatur," MS. Rawl. C. 160.

claimed or a tenement in demesne. But if when any one has been so enfeoffed for himself and his heirs to hold of his own feoffor, and in return for having the warranty and protection of the church has rendered an annual rent to the church, this ought not to be called a service, on the contrary a certain offering in the name of alms. In which case nothing more can be claimed, neither in the name of an escheat nor for any other reason, and according to the aforesaid distinction it can be easily discovered, whether the person had a just cause of claiming a tenement in demesne or only a service. Likewise it will have to be seen by whom the land was so given to the church, to wit, whether by him who had the right, or by another who had not the right: in which case a warrantor may be called, according to what is done in other pleas and assises, and if the warrantor has made default let proceedings be had as above in the case of a warrantor called in an assise of mortdancester.

3. How proceedings are to be taken for an assise. f. 287.

But amongst other exceptions and answers there may be elicited from the premises exceptions and replications, if the parties wish. But if there be not a warrantor, nor an exception which may be advanced, the parties and the jurors being present in court, let the assise proceed in the manner of an assise (according to some) there having been made an expression of the tenement claimed on account of the view which the jurors make thereof, according to what is done in the other assises aforesaid. The form of the oath in this assise is according to this manner. Ye hear this, justiciaries, that I will say the truth concerning this assise and concerning a virgate of land with its appurtenances whereof I have msde a view by the precept of the lord the king, whether forsooth the aforesaid land with its appurtenances be free alms appertaining to such a church, of which so-and-so is the parson, or a lay fee of such an one; or conversely according as the parson has instituted the assise or a layman: and I will for nothing omit, &c. And according to this

capta fuerit in modum assisæ, sequatur irrotulatio talis Assisa venit recognitura utrum &c.

4.
Alia forma in modum juratæ.

Si autem capiatur in modum juratæ, cùm assisa ista contineat in se possessionem & jus, vel cùm partes se posuerint in juratam de consensu communi propter aliquam exceptionem incidentem extra assisam, tunc fiat sacramentum sic in modum juratæ, nulla facta mentione de visu facto. Hoc auditis justiciarii, quòd veritatem dicam de hoc quod à me requiretis ex parte domini regis, & pro nihilo omittam &c. In quo casu, oportet instruere juratores super quibus dicere debeant veritatem ita: dicetis super sacramentum vestrum, utrum tantum terræ cum pertinentiis in tali villa sit libera eleemosyna &c. & secundùm hoc fiat irrotulatio ita. Jurata venit recogñ, si &c., & secundùm veredictum juratorum procedit judicium secundùm quod sciverint, vel ignoraverint, vel dubitaverint.

Cap. III.

1.
De remediis, quæ competunt personæ sicut layco.

Britton, iv. ch. viii. § 3.

Sunt etiam plura remedia, quæ competunt personæ sicut & layco, scilicet assisa novæ disseysinæ de propria seysina, si persona fuerit disseysita. Item breve de ingressu de seysina sua propria vel alicujus prædecessoris sui. Item assisa ad recognoscendum utrum &c., hæc omnia competunt personæ sicut & layco. Sunt quædam quæ competunt layco & non personæ, sicut in causa successionis, ubi fit descensus ab antecessore ad hæredem, quod quidem esse non poterit in persona, ut si laycus petat versus personam seysinam antecessoris sui, quo casu procedendum erit sicut inter alias quascunqȝ personas. Item si petat per breve de recto, &

form of oath when the assise has been taken in the manner of an assise, let such an entry be made on the roll: An assise came in order to recognise, &c.

4. Another form after the manner of a jury.

But if it be taken after the manner of a jury, since this assise contains in itself the possession and the right, or when the parties have put themselves on a jury by common consent on account of some incidental exception outside the assise, then let the oath be taken in this form after the manner of a jury, no mention having been made of a view having been taken. Ye hear this, justiciaries, that I will say the truth concerning this which is required of me on the part of the lord the king, and for nothing will I omit, &c. In which case, it is necessary to instruct the jurors on what things they ought to say the truth, in this manner: ye shall say upon your oath, whether so much land with its appurtenances in such a vill is free alms, &c., and according to this let an entry be made on the roll: A jury came to recognise, &c., and according to the verdict of the jury the judgment proceeds according to what they know or are ignorant of or have doubted about.

Chapter III.

1. Of the remedies, to which a parson is entitled just as a layman.

But there are several remedies to which a parson is entitled just as a layman, to wit, an assise of novel disseysine from his own seysine, if a person has been disseysed. Likewise a writ of entry concerning his own seysine or that of some predecessor of his own. Likewise an assise to recognise whether &c., to all these a parson is entitled just as a layman. There are some to which a layman and not a parson is entitled, as in a cause of succession, where there is a descent from an ancestor to an heir, which cannot happen in the case of a parson, as if a layman claims against a parson the seysine of his ancestor, in which case proceedings must be had as between any other persons. Likewise if he claims by

tunc aut habet warantum, aut non habet. Si autem warantum habeat & ei warantizaverit, procedatur inter warantum & petentem sicut inter alias personas, & ad duellum & ad magnam assisam. Si autem warantum non habuerit, & in propria persona videre[1] voluerit, duo habebit remedia per breve de recto, & unum habere poterit quod elegerit, si tempus probationis permiserit quòd quis testificari poterit de suo proprio visu & auditu, & tunc ponere se poterit in juratam (si voluerit), utrum terra petita sit libera eleemosyna &c. an laycum feodum &c. ac si ipse laycus ab initio peteret per assisam. Et propter hoc non vertitur causa proprietatis in causam possessionis, licet utramq; determinat. Si autem elegerit se defendere per duellum, vel per magnam assisam (de necessitate) cùm non possit aliquis loqui de proprio visu & auditu, propter tempus longissimum, benè licebit ei propter necessitatem, cùm per assisam non possit, si potestas ordinaria & consensus patronorum permiserint.

f. 287 b.

2. Si tenementum poterit accidere ut eschaeta.

Si quis autem tenuerit de ecclesia aliquam terram in liberam eleemosynam pro servitio, si contingat talem feloniam facere, vel mori sine hærede, tenementum illud erit eschaeta ecclesiæ, sicut cuilibet alterius privatæ personæ, propter servitium & jus merum, quod non poterit ad alium descendere, & sic evanescit homagium sicut inter alios quoscunq;. Si autem ecclesia vel persona nomine ecclesiæ nihil perceperit nisi nomine eleemosynæ, nihil petere poterunt nomine eschaetæ, sed ad eos pertinebit eschaeta, qui in seysina fuerint de servitio. Sed esto quòd persona, qui nomine eleemosyæ aliquid perceperit, se posuerit in eschaetam, & per negligentiā veri domini, sic tenementū illud sibi ipsi appropriaverit, vel ad alium ex quacunq; causa

[1] "respondere," MS. Rawl. C. 160.

a writ of right, and then he either has or has not a warrantor. But if he has a warrantor, and the warrantor has fulfilled his warranty, let proceedings be had between the warrantor and the claimant as between other persons both up to the duel and to the great assise. But if he have not a warrantor and has wished to answer in his own person, he shall have two remedies by a writ of right, and one he may have which he may choose, if the time of proof will permit that a person may testify of his own sight and hearing, and then he may put himself upon a jury (if he wishes) whether the land claimed is free alms, &c., or a lay fee, &c., as if the said layman had from the commencement claimed by an assise. And on this account a cause of property is not turned into a cause of possession, although it determines both. But if he has chosen to defend himself by the duel, or by the great assise (of necessity), when no one can speak from his own sight and hearing on account of the great distance of time, it will well be allowable for him on account of the necessity, since he cannot defend himself by an assise, if the ordinary authority and the consent of the patrons have permitted him.

f. 287 b.

2. If the tenement can fall in as an escheat.

But if any one has held from a church a certain land in free alms for a service, if it happens that such person commits a felony, or dies without an heir, that tenement will be an escheat to the church, as to any other private person, on account of the service and the absolute right, which can not descend to another, and so the homage is evanescent as amongst any other persons whatsoever. But if the church or the parson in the name of the church has received nothing except in the name of alms, they can claim nothing in the way of an escheat, but the escheat will belong to them, who have been in seysine of the service. But let it be that the parson who has received something in the name of alms has put himself into the escheat, and through the negligence of the true lord has thus appropriated that tenement to himself, or

transtulerit, tenendum de ecclesia & pro certo servitio simul cum eleemosyna, quæritur an successor ejus personæ tenementum illud petere poterit in dominico? videtur quòd sic, propter talem ingressum prædecessoris, quamvis injuriosum quoad verum dominum, donec ille verus dominus qui jus habet, docuerit tenementum illud esse eschaetam suam. Et quid si uterq; petat uno & eodem tempore? quæritur quis eorum alteri præferri debeat? Et revera recurrendum erit priùs ad ultimam seysinam prædecessoris (quamvis injuriosam) per assisam, & postea cùm persona obtinuerit per assisam, locum habebit breve de ingressu versus eum. Et quid si, cùm tenens primò implacitatus fuerit per breve de recto, personam successorem vocaverit ad warantum? quæritur an warantizare debeat: & tunc primò videndum est an sit in seysina de homagio & servitio tenentis illius, an non: si autem sit, tunc tenetur ad warantiam, saltem vita sua perpetuo quoad vixerit, & post mortem suam successor suus habebit actionem, non obstante homagio & servitio facto suo prædecessori. Si autem homagium & servitium non accepit, non tenetur warantizare (nisi gratis velit), ex quo petiturus est tenementum in dominico. Si autem bastardus aliquis quicunq; clericus vel laycus feoffatus fuerit tenendi de ecclesia, & hæredem non habuerit de corpore suo, nec terram nec tenementum suum alicui assignaverit in vita sua per modum donationis, & rector ecclesiæ qui post eum fuerit, cùm tenementum petierit in dominico, nihil per assisam acquisiverit nisi tantum servitium, poterit terram illam petere in dominico versus quemlibet possidentem ut eschaetam suam nomine ecclesiæ suæ per tale breve.

3. Breve, quod terra

Præcipe tali, quòd justè &c. reddat tali rectori tantam terram cum pertinentiis &c. quàm clamat esse jus

has transferred it to another from whatever cause, to be held of the church and for a certain service together with the alms, it is asked can the successor of that parson claim that tenement in demesne? It appears to be so on account of such an entry of his predecessor, although injurious as regards the true lord, until the true lord who has the right has proved that tenement to be his escheat. And what if each claims at one and the same time? it is asked which of them ought to be preferred to the other? And in truth recourse must be had in the first place to the last seysine of a predecessor (although injurious) by an assise, and afterwards when the parson has prevailed by an assise, a writ of entry against him will have place. And what if, when the tenant has been first impleaded by a writ of right, he has called the parson successor to warrant, it is asked if he ought to warrant? And then it has first to be seen, whether he is in seysine of the homage and service of that tenant or not. And if he be, then he is bound to warrant at least during his lifetime perpetually as long as he lives, and after his death his successor will have an action, notwithstanding the homage and service done to his predecessor. But if he has not received homage and service, he is not bound to warrant (unless he wishes gratuitously), since he is about to claim the tenement in demesne. But if a bastard, whosoever he be, a clerk or a layman, has been enfeoffed of land to be held of a church, and has no heir from his body, nor has assigned the land nor the tenement to any one during his lifetime by means of a donation, and the rector of the church who has come after him, when he has claimed the tenement in demesne, has acquired nothing by the assise except only the service, he may claim that land in demesne against anybody in possession of it as his escheat in the name of his church by a writ of this kind.

3. A writ that land

Enjoin so-and-so, that justly &c. he restore to such a rector so much land with its appurtenances &c. which he

reddatur ut eschaeta.

ecclesiæ suæ, & quæ ad prædictam ecclesiam suam reverti debet tanquam eschaeta sua, eo q talis quondā rector ecclesiæ suæ prædictæ, per quā prædictus talis ingressum habuit in terram illam, bastardus fuit & tenuit de prædicta ecclesia sua, & obiit sine hærede de se, ut dicit, & nisi fecerit &c. Item in omnibus assisis & juratis generaliter, si cùm partes præsentes fuerint in judicio, detur alius dies ante captionem sine suo essonio, & concedatur fortè à tenente, quòd sive venerit sive non, capiatur assisa vel jurata per defaltam, si assisa vel jurata per defaltam faciat pro petente, non præcisè procedatur ad judicium eodem die, sed detur alius dies, ad quem si non venerit tenens, tunc capiatur terra in manum domini regis pro secunda defalta, & ipse summoneatur quòd sit ad alium diem auditurus judicium suum de defalta: Ad quem diem sive venerit sive non, petens recuperabit seysinam suam, & reddatur judicium suum. Si autem ulteriùs convenerit, quòd primo die & per primam defaltam capiatur assisa & reddatur judicium: tunc primo die fiet ut convenit, nec expectabitur alius dies. Cùm autem hujusmodi assisa seysinam importet & jus, ita quòd, si tenementum ad laycum feodum convincatur, ad liberam eleemosynam trahi non possit imposterum, nec e converso, quæro an locum habere debeat convictio, si duodecim juratores malè juraverint? & quòd locum habere debeat, si in modum assisæ capiatur, probatur in rotulo de itinere abbatis de Radinge & Martini de Pateshull anno regni regis Henrici quinto in comitatu Gloc., assisa utrum una hyda terræ, circa principium. Ad hoc etiam facit de termino Sancti Hillarii anno regis Henrici duodecimo in coñ Buck., assisa utrum duæ

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claims to be the right of his church, and which ought to revert to his church as his escheat, inasmuch as so-and-so formerly rector of his aforesaid church through which such person aforesaid had an entry on to the land was a bastard, and held of the aforesaid church and died without an heir of his body, as he says, and unless he does &c. Likewise in all assises and juries generally if, when the parties are in judgment, another day has been allowed before the holding of the assise without its essoin, and it be conceded by chance by the tenant, that whether he has come or not, the assise or the jury shall be held without default, if the assise or the jury by default makes for the claimant, proceedings to judgment shall not be had precisely on that day, but another day shall be given, on which if the tenant has not come, then let the land be taken into the hand of the lord the king for the second default; and let the party himself be summoned to be present on another day to hear his judgment by default, upon which day, whether he has come or not, the claimant shall recover his seysine, and judgment shall be rendered to him. But if it has been further agreed that on the first day and upon the first default the assise shall be taken and judgment rendered, then on the first day it shall be done as agreed upon, nor shall another day be expected. But since an assise of this kind imports seysine and right, so that if the tenement be proved to be a lay fee it cannot be converted into frankalmoign for the future, nor conversely, I ask if a conviction ought to take place, if the twelve jurors have sworn wrong, and that it ought to take place, if it has been taken in the form of an assise, is proved in the roll of the iter of the abbot of Reading and of Martin de Pateshull in the fifth year of the reign of king Henry in the county of Gloucester, an assise whether one hide of land, about the commencement of the roll. For this also makes a case in St. Hilary term in the twelfth year of king Henry in the county of

be restored to a rector as an escheat.

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virgatæ terræ, & hoc verum est, nisi petatur convictio per longum intervallum post captionem assisæ: ut in eodem itinere in comitatu Gloc., quia post longum intervallum transit judicium in autoritatem rei judicatæ, tempus tamen non est definitum. Sed in eodem itinere petebatur convictio post lapsum sexdecim annorum, quod tamen non fuit concessum. Cùm verò aliqua prædictarum assisarum capiatur in modum assisæ, videndum erit à justiciariis & diligenter examinandum quid & quantum querens posuerit in visu suo, quia ultra id, quod in judicium deducitur, potestas justiciariorum non extenditur, nec etiam sacramentum juratorum, quia licet querens de majori quantitate disseysitus fuerit, & totum in visu suo non posuerit, in eo quod excedit non potest justiciarius judicare, nec jurator jurare, quia non jurat nisi de eo quod ei ostenditur à querente. Et ideò si ulteriùs extendant sacramentum, non erit locus convictioni, cùm sacramentum sit nullum, sed locus erit assisæ novæ disseysinæ contra juratores tantum, & non contra illum qui judicatum recepit. Si autem id quod querens in visu suo proposuerit totum dederit querenti, & ipse querens ea occasione plus occupaverit, ad querelam ejus qui amisit recentem locus erit certificationi per officium justiciariorum, vel locus erit assisæ novæ disseysinæ contra eum qui occupaverit: & hinc inde post captionem assisarum locus erit convictioni, si partes voluerint. Item de eo, de quo juratores visum fecerint, videndum erit utrum totum dederit tenenti vel abstulerit, & tunc refert

Buckingham, an assise whether two virgates of land, and this is true, unless a conviction is claimed after a long interval since the holding of the assise, as in the same iter in the county of Gloucester, because after a long interval a judgment passes into the authority of a matter adjudicated upon, the time however is not defined. But in the same iter a conviction was claimed after the lapse of sixteen years, which however was not granted. But when any of the aforesaid assises are held after the manner of an assise, it will have to be seen by the justiciaries and diligently examined, what and how much the plaintiff has placed in his view, because the power of the justiciaries is not extended beyond that which is brought into judgment, nor the oath of the jurors, because although the plaintiff may have been disseysed of a greater quantity, and has not put the whole in his view, the justiciary cannot judge as regards what is in excess, nor the juror swear, because he does not swear except concerning that which is pointed out to him by the plaintiff. And therefore if they extend further their oath, there will be no place for a conviction, since there is no oath, but there will be place for an assise of novel disseysine against the jurors only, and not against him who has received the thing adjudged. But if he has given to the plaintiff the whole of that which the plaintiff has propounded in his view, and the plaintiff himself on that occasion has taken possession of more, upon the recent complaint of him, who has lost it, there will be place for a certification through the office of the justiciaries, or there will be a place for an assise of novel disseysine against him who has taken possession, and on this side or the other after the holding of the assises, there will be place for a conviction, if the parties wish. Likewise concerning that, concerning which the jurors have made a view, it will have to be seen whether he has given the whole to the tenant or has taken it away, and then it is of import-

utrum justè vel injustè ad hoc quòd sequatur convictio vel non. Item utrum totum vel ejus partem justè vel injustè, ut secundùm hoc remaneat unus in misericordia vel ambo.

f. 288 b.

Cap. IV.

1. De convictione sive attincta juratorum, qui male juraverint.

Britton, iv. ch. ix. § 1.

Cum verò in aliqua prædictarum assisarum contigerit, quòd juratores falsum fecerint sacramentum & ita commiserint perjurium, ad querelam ejus qui per assisam amiserit convinci poterunt de perjurio multis modis, quandoq, per sacramentum 24, quandoq, ex ore proprio per examinationem judicis, & sine jurata 24, & quandoq, ex propria confessione & propria voluntate, ut si proprium delictum cognoscant & se ponant in misericordia domini regis, ut dictum suum possit emendare. Sed in omnibus casibus prædictis non erit par pœna infligenda vel eadem, secundùm quod inferiùs dicetur. Si autem convincendi sint juratores per 24, videndum erit quòd[1] juratores fuerunt in assisa, ut quilibet ad minùs duos habeat convictores, & si plures habeat non nocet, etiam ita quòd omnes sint ejusdem conditionis ad minùs cujusmodi sunt duodecim juratores, si melioris conditionis esse non possunt. Et cùm de convictione agatur, possit[2] esse in causa tam justiciarius q juratör, & standum erit recordo justiciariorum donec per convictionem mutetur vel teneat. Igitur ante omnia, & etiam antequam jurata summoneatur, videndum erit recordum & examinandum, ut si judex fuerit in culpa, hoc juratoribus non imputetur nec e converso, & quòd pœnam non sentiat, quia culpa immunis extiterit. Judex enim sive justiciarius ad quem pertinet examinatio si minùs diligenter examinaverit,

[1] "Quot," MS. Rawl. C. 160. | [2] possint," MS. Rawl. C. 160.

ance, whether he has done so justly or unjustly for the purpose of a conviction following or not. Likewise whether he has given or taken away the whole or a part of it justly or unjustly, that the one or both may accordingly be amerciable.

Chapter IV.

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1. Of the conviction or attaint of the jurors, who have sworn wrong.

But when in any of the aforesaid assises it has happened, that the jurors have made a false oath and have thus committed perjury, upon the complaint of him who has lost by the assise they may be convicted of perjury in many ways, sometimes by the oath of twenty-four, sometimes out of their own mouth through the examination of the judge, and sometimes from their own confession and their own will, as if they should acknowledge their own fault and put themselves on the mercy of the lord the king that he may amend their finding. But neither the same nor an equal punishment ought to be awarded in all the aforesaid cases, according to what will be stated below. But if the jurors are to be convicted by twenty-four, it must be seen how many jurors there were in the assise, that each may have at least two to convict him, and if he has more it does no harm, likewise so that all should be of the same condition at least as that of the twelve jurors, if they cannot be of a better condition. And when proceedings are taken for a conviction, the justiciary as well as the juror may be to blame, and we must abide by the record of the justiciaries, until it is changed by a conviction or it holds good. Therefore before all things and even before the jury is summoned, the record must be seen and examined, that if the judge be in fault, this may not be imputed to the jurors, nor conversely, and that he may not suffer punishment because he is free from fault. For the judge or the justiciary, to whom the examination appertains, if he has not examined with

occasionem præbet perjurii juratoribus, nec juratores à culpa liberat nec seipsum. Audito igitur recordo, perpēdi poterit (& nō priùs) utrū assisa capta fuerit in modum assisæ vel in modū juratæ, & secundùm hoc adjudicare convictionē vel nō adjudicare. Et si in modum assisæ capiatur assisa, per juratam convincatur utrum duodecim verum fecerunt sacramentum vel falsum, si autem verum, tenebit eorum veredictum, si autem falsum, convincendi sunt propter perjurium. Poterit etiam sacramentum esse falsum & fatuum. Et eodem modo judicium sive justiciarii sive juratorum. Committit enim jurator perjurium propter falsum sacramētum, ut si ex certa scientia aliter juraverit, quàm res in veritate se habuerit. Si autem sacramentum fatuum fuerit licet falsum, tamen non committit perjurium, licet re vera res aliter se habeat quàm juraverat, & quia jurat secundùm conscientiam eo ꝗ non vadit contra mentem. Sunt quidam qui falsum dicūt mentiendo, sed se pejerant, quia contra mentem vadunt. Sunt etiam quidam qui falsum dicant jurando, sed non se pejerant, eo quòd non mentiuntur nec contra mentem vadunt, cùm credunt ita esse secundùm conscientiam, quamvis res se habeat aliter in veritate. Ut si quis interrogat quis fuit ad consilium London, & respondeat quis, quòd rex & comes Richardus (ut credit) licet aliter sit in veritate, quòd comes ibi non fuerit, talis non mentitur, & licet juraverit quòd ita sit (ut credit), perjurium non committit. Item vice versa, dicunt quidam verum & mentiuntur & pejerant eo quòd contra mentem vadunt, quia non credunt ita esse

Math. Paris, a°. 1254. 38 H. III. f. 289.

sufficient diligence, affords an occasion for perjury to the jurors, nor does he free the jurors nor himself from fault. Upon the record therefore having been read (and not before), it may be determined whether the assise has been taken in the manner of an assise or in the manner of a jury, and according to this to adjudge a conviction or not to adjudge it. And if an assise has been held in the manner of an assise, let a conviction be made by a jury, whether the twelve have made a true or a false oath, but if a true oath, their verdict shall hold good, but if a false oath, they are to be convicted on account of perjury. An oath may also be false and fatuous. And in the same way the judgment either of the justiciary or of the jurors. For a juror commits perjury on account of a false oath, as if he has sworn a thing of his certain knowledge otherwise than the thing has been of truth. But if his oath has been fatuous although false, he does not however commit perjury although in truth the thing be otherwise than he has sworn, and because he swears according to his conscience inasmuch as he does not go against his intelligence. There are some who say what is false in lying, but they perjure themselves, because they go against their intelligence. There are also some who say what is false upon their oath, but they do not perjure themselves, inasmuch as they do not lie nor go against their intelligence, since they believe it to be so according to their conscience, although the thing is otherwise in truth. As if any one should ask who was at the Council of London, and some one should answer that the king and earl Richard were there (as he believes), although it be otherwise in truth, that the earl was not there, such a person does not lie, and although he may have sworn that it was so (as he believed), he does not commit perjury. Although conversely, some say the truth and they lie and they commit perjury, inasmuch as they go against their intelligence, because they do not believe the thing to be so as they say, as if a Jew

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sicut dicunt, ut si Judeus dicat Christum natum ex virgine, mentitur: quia contra mentem vadit & non credit ita esse, cùm ita sit in veritate, & si juraverit, perjurium committit. Eodem modo potest jurator falsum facere juditium & fatuum, cùm judicare teneatur per verba in sacramento contenta, quæ talia sunt: quòd dicet veritatem si talis disseysivit talem, & tunc videndum utrum simpliciter dicat sine aliqua ratione dicti sui quod talis disseysivit talem, vel quòd non disseysivit, quo casu, si revera res aliter se habeat, falsum sequi poterit juditium, si contra mentē jerit fatua [1] pronuntiatio justitiarii licet, non falsa, quia non examinavit. Item eodem modo fatuum poterit juditium esse juratorum, si non contra mentē jerint, et similiter fatua pronūtiatio judicis. Item si dicat, quòd talis disseysivit talē vel non disseisivit, et rationē dicti sui assignaverit narrando veritatē per ordinem, licet expressè non judicent, faciunt tamen quod tantūdem valet. Et licet narratio fortè contraria sit sacramento et dicto præcedenti, tamen falsum non faciunt sacramētum, licet faciunt fatuum juditium, quia loquitur [2] secundum conscientiam, quia falli possunt in juditiis suis sicut ipse justitiarius. Et si justitiarius secundum eorum juditium pronunciaverit, falsum faciet pronuntiationem. Si autem aliter quàm res se habuerit narraverint, aut hæc faciunt ex certa scientia aut justo errore ducti sunt. Et si examinati, cùm justo deducantur errore, dictum suum emendaverint, hoc bene facere possunt ante judicium & impunè, sed post juditium non sine pœna. Si autem in falsitate permanserint et ex certa

Britton, iv. ch. ix. § 2.

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[1] "et fatua," MS. Rawl. C. 160. | [2] "loquuntur," M.S. idem.

should say that Christ was born of a virgin, he lies because he goes against his intelligence and does not believe it to be so, although it be so in truth, and if he has sworn so, he commits perjury. In the same manner a juror may make a false and fatuous judgment, when he is bound to judge by the words contained in the oath, which are of this kind, that he shall speak the truth, if such an one has disseysed so-and-so, and then it is to be seen whether he simply says without any reason for his saying that such an one has disseysed so-and-so, or that he has not disseysed him, in which case if the thing is otherwise in truth, a false judgment may follow, if a fatuous sentence of the justiciary, although it be not false, has gone against his intelligence, because he has not examined. Likewise in the same manner the judgment of the jurors may be fatuous, if they have not gone against their intelligence, and in like manner the sentence of the judge may be fatuous. Likewise if he should say that such a person disseysed so-and-so or did not disseyse him, and has assigned a reason for his so saying by narrating the truth in order, although they do not expressly judge, they nevertheless do what is equivalent. And although the narration be by chance contrary to their oath and precedent saying, nevertheless they do not make a false oath, although they make a fatuous judgment, because he speaks according to his conscience, because they may be deceived in their judgments just as the justiciary himself. And if the justiciary should pronounce according to their judgment, he will make a false pronouncement. But if they have narrated the matter otherwise than it has happened, they either do this from their certain knowledge or have been induced by just error. And if upon examination, when they are led away by just error, they have corrected their saying, this they may well do before judgment and with impunity, but after judgment not without a penalty. But if they have persisted in their falsity and from their

scientia sua falsum dixerint, sed non ante judicium, ore tenus convinci possint, post juditium convinci poterunt per juratam. Item in culpa poterit esse judex sive justitiarius et non jurator, ut si cum jurator veritatem dixerit et rationem dicti sui assignaverit et justitiarius pronuntiaverit in contrarium, et hoc facit ex certa scientia. In hoc casu tenebitur ex malefitio malè pronuntiando et pervertendo scienter justum judicium juratorum, et sic non erunt juratores in culpa, sed justitiarius. Si autem hoc fecerit per ignorantiam vel per imperitiam, tenebitur ex quasi malefitio, sed cum eo propter imperitiam, mitiùs erit egendum[1] quoad pœnam. Examinato igitur (ut prædictum est) recordo, aut statim concedatur convictio, aut penitus denegetur. Esto etiam quòd juratores minus bene examinati obscurum dixerint, vel ad interrogata non responderint plenè vel dubiè, vel justo errore ducti veritatem non dixerint in parte vel in toto, tunc examinato recordo (ut prædictum est) locus erit potiùs certificationi quâm convictioni ex tali causa, ut de incerto faciant certum, et de dubio verum, et de errore revocentur ad veritatem. Cùm igitur petatur certificatio, non debet de facili concedi coram alio quàm coram ipso qui ceperit assisam, et hoc nisi ex aliqua causa suspitionis. Et si coram alio capi debeat, non priûs concedatur quàm videatur recordum et examinetur: ut superius observatur de convictione, et si recordum fuerit sufficiens et planum, non erit necesse quòd fiat certificatio, cùm juratores recordum suum sive dictum mutare non possit[2] nec in dicto suo variare contra recordum justitiari-

Britton, ib. § 5.

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[1] "agendum," MS. Rawl. C. 160.

[2] "possint," MS. id.

own certain knowledge they have said what is false, they may be convicted orally but not before judgment, and they may be convicted after judgment by a jury. Likewise the judge or a justiciary and not a juror may be in fault, as if when a juror has said the truth and has assigned the reason for his saying, and the justiciary has pronounced sentence to the contrary, and this he does from certain knowledge. In this case he shall be responsible for malice in pronouncing sentence wrongly, and in perverting knowingly the just judgment of the jurors, and thus the jurors will not be to blame but the justiciary. But if he has done this through ignorance or from inexperience he shall be responsible for a kind of malice, but he shall be treated more mildly as regards the punishment on account of his inexperience. Upon the record having been examined (as said above), the conviction should be forthwith conceded or entirely refused. Let it be also that the jurors having been badly examined have answered obscurely, or have not replied to the interrogatories fully, or have replied doubtfully, or induced by a just error, have not spoken the truth in part or in the whole, then upon the record having been examined (as said above), there will be place for a certification rather than for a conviction from such a cause, that they may make a certainty out of an uncertainty, and a truth out of a doubt, and may be recalled from error to truth. When therefore a certification is asked for it ought not to be easily granted before any one else than before him who held the assise, and this only on some cause of suspicion. And if it must be held before somebody else, let it not be allowed before that the record is seen and examined, as has been above observed concerning a conviction, and if the record be sufficient and full, there will be no necessity that a certification should be made, since the jurors cannot change their record nor their finding, nor vary in their finding against the record of the justiciaries, for if it were so, their

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orum, quod si ita esset, sic præferetur eorundem dictum & in nullo valeret recordum. Et si contingat quòd dicant contra recordum, sic se ipsos ore tenus convincunt. Supplere autem possunt in certificatione defectum, ut si minus dixerint, vel obscurum, vel si justo errore ducti fatuum fecerint sacramentum, vel in narratione facti vel in juditio, dictum suum emendare poterunt ante judicium & impunè, sed post juditium non sine pœna, cûm se inde posuerint in misericordia[1] domini regis, & pœnam perjurii non evadent quoad redemptionem, dum tamen infames non efficiantur secundum quod de illis observatur, qui jurant salvo visu. Si autem omnia plana fuerint in recordo & plena, non est locus certificationi, sed querens agat de convictione si voluerit.

2. Quando locus est convictione et quando non.

Ut pleniûs autem sciatur, quando sit locus convictioni & quando non, videndum erit per recordum utrum assisa capta fuerit in modum assisæ vel in modum juratæ, opposita exceptione vel non opposita. Item utrum assisa capta fuerit in præsentia tenentis vel eo absente. Si autem fuerit ibi exceptio ꝑposita, aut est peremptoria tantum brevis & non actionis, propter errorem qui provenit ex ipso nomine vel loco, sicut comitat̃ vel villæ, & qui non tangit assisam: hic cùm assisa & actio integra remaneat, non erit locus convictioni licet juratores falsum dixerint vel erraverint, quia non cadit nisi tantum breve durante assisa in suo statu, & de hujusmodi veritate inquiritur ita bene quandoque sine sacramento, quandoque cum sacramento. Si autem exceptio fuerit peremptoria tam assisæ quàm brevis propter errorem rei, ut si quis petat

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[1] "misericordiam," MS. Rawl. C. 160.

word would be preferred, and the record would be of no value. And if they should say contrary to the record, they thereby convict themselves as far as their words are concerned. But they may supply in the certification what is defective, as if they have spoken insufficiently, or what is obscure, or if led by a just error they have made a fatuous oath, or in the narration of the fact or in the judgment, they may amend their finding before judgment and with impunity, but after judgment not without a penalty, when they have put themselves upon the mercy of the lord the king, and they shall not escape the penalty of perjury as regards the redemption of it, whilst however they shall not be rendered infamous according to what is observed concerning those who swear saving the view. But if all things are plain on the record and are full there is no place for a certification, but the plaintiff may proceed for a conviction, if he wishes.

2. When there is place for a conviction, and when not.

That it may be more fully known when there is place for a conviction and when not, it will have to be seen by the record whether the assise was held after the manner of an assise or after the manner of a jury, after an exception had been objected or not. Likewise whether the assise was held in the presence of the tenant, or whilst he was absent. But if an exception has been propounded, it is either peremptory only as regards the writ and not the action, on account of an error which has arisen as to the name or the place, as of the county or of the vill, and which does not touch the assise: here since the assise and the action remain entire, there will be no place for a conviction, although the jurors have found falsely or have erred, for only the writ falls, the assise continuing in its own state, and concerning a truth of this kind an inquest is well made sometimes without an oath, sometime with an oath. But if the exception has been peremptory against the assise as well as the writ on account of an error in the thing, as if a person claims by an

per assisam tenementum sibi, ubi petere deberet redditum, si juratores dicant pro petente, locus erit convictioni, si assisa capiatur in modum assisæ, secus si in modum juratæ, & sic per assisam vel juratam terminabitur actio. Si autem breve competens fuerit, & cùm querens vel petens intentionem suam proposuerit & articulos brevis, excipiat tenens contra articulos brevis & contra intentionem, & illos in toto vel in parte negaverint, tunc oportebit querentem vel petentem intentionem suam probare per assisam, quo casu, si juratores malè juraverint, locus erit convictioni, quia capitur assisa de articulis supradictis in modum assisæ. Si autem talis sit exceptio, quæ non tangat aliquem articulum brevis, & si ex toto concedatur intentio querentis & querela justa videatur, tamen elidi poterit per exceptionem: ut si incidat alia actio opposita in modum exceptionis, ut si tenens dicat se esse in possessione & justè per conventionem sive conditionem, & hoc probare paratus sit, sic eliditur actio & assisa præcedens, cùm denegari non possit. Oportet igitur probare conventionem, quæ est alia actio & extra assisam, & quæ multas habet probationes: probatur enim quandoque per instrumentum & per testes, quandoque per assisam in defectu instrumentorum captam in modum juratæ & non assisæ, de consensu & voluntate utriusquè partis, quia oportet de necessitate quòd consentiant, & si proponens probare voluerit quod dicit, exceptio erit nulla, & querens obtinebit. Si autem querens se ponere voluerit in juratam, denegabitur actio, in quo casu propter consensum non erit locus omninò convictioni.

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assise a tenement for himself where he ought to claim a rent, if the jurors find for the claimant, there will be a place for conviction, if the assise be held after the manner of an assise, otherwise, if held after the manner of a jury, and so the action will be terminated by the assise or the jury. But if the writ has been suitable, and when the plaintiff or claimant has propounded his declaration and the articles of the writ, the tenant should except against the articles of the writ and against the declaration, and has denied them in the whole or in part, then it will be incumbent on the plaintiff or claimant to propound his declaration by an assise, in which case, if the jurors have sworn wrong, there will be place for a conviction, because the assise is taken upon the articles above said after the manner of an assise. But if the exception be such as does not touch any article of the writ, and if the declaration of the plaintiff be altogether conceded, and his complaint appears to be just, nevertheless it may be parried by an exception, as if another action be incident objected after the manner of an exception, as if the tenant should say that he is in possession and justly so through an agreement or under a condition, and he is prepared to prove this, the action is thus parried and the preceding assise, when it cannot be denied. It is incumbent therefore to prove the agreement, which is another proceeding and is outside the assise, and which has many proofs, for it is proved sometimes by an instrument and by witnesses, sometimes by an assise in defect of instruments held after the manner of a jury and not of an assise, with the consent and will of either party, because it is incumbent of necessity that they should consent, and if the party propounding it has wished to prove what he says, an exception will be null, and the plaintiff shall prevail. But if the plaintiff wishes to put himself on a jury, an action will be denied to him, in which case on account of his consent there will be no place for a conviction. The same thing will result

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Illud idem erit, si status opponatur in modum exceptionis. Et stat si[1] assisa, si querens personam habeat standi in juditio & quòd petere non possit per assisam, oportet quòd tenens probet illum esse talem, & quia ex toto conceditur intentio querentis, si personam habeat in judicio standi, quo probato vel non probato terminabitur actio. Probare enim poterit tenens exceptionem suam multis modis per parentes, si illos statim habuerit ad manum, & si non, ad alium diem. Sed admitti non deberet talis probatio per parentes, si contigerit postmodum quòd de statu ageretur, nisi opposita esset a domino contra servum existentem sub potestate sua, & in quo casu, uno juditio terminaretur status & assisa, quod quidem non esset si esset extra potestatem domini & juditium peteret, si ponere se deberet in assisam de statu ante restitutionem, ad quod quidem compelli non deberet, nisi hoc de voluntate sua procederet, cùm alia actione opus esset. Si autem nullos parentes habuerit, tunc per instrumentum exceptionis & cùm nullam aliam habuerit, tunc in fine per assisam, contra quam querens replicare poterit multis modis de libertate, & probare se liberum per parentes, vel per instrumentum manumissionis, vel per privilegium, vel quòd sit in statu libero extra potestatem dominorum, in quibus casibus, se defendere poterit si replicationem probaverit. Si autem nullam habuerit, vel cùm habuerit illam non proposuerit, tunc ad ultimum per assisam in modum juratæ captam judicabitur, nec per hoc ei præjudicabitur imposterum quoad statum, sive jurata faciat pro eum[2] sive contra ipsum, nec erit locus convictioni, quia non capitur in modum assisæ, nec servitus opposita tangit assisam magis quâm conventio, sed assisa semper manet inte-

Britton, iv. ch. x. §§ 5, 6.

[1] "si," omitted, MS. Rawl. C. 160. | [2] "pro eo," M.S. idem.

if *status* be objected after the manner of an exception. And the assise stands, if the plantiff is of a personal condition to sue in court, and that he cannot claim by an assise, it is incumbent on the tenant to prove him to be such, and because the declaration of the plaintiff is conceded entirely, if he is of a condition to sue in court, upon proof or disproof of which, the action will be terminated. For the tenant may prove his exception in various ways by his kinsmen, if he has them immediately at hand, and if not, on another day. But such a proof by his kinsmen ought not to be admitted, if it should happen afterwards that there should be an action respecting his *status*, unless it is objected by a lord against a serf who is under his power, and in which case, the *status* and the assise will be determined by one judgment, which would not be the case, if he was beyond the power of the lord and claimed a judgment, if he ought to put himself upon an assise respecting his *status* before restitution [of his goods], to which indeed he ought not to be compelled, unless it has proceeded from his own will, since there would be need of another action. But if he has no kindred, then by an instrument of exception, and when he has no other, then finally by an assise, against which the plaintiff may reply in several modes concerning his freedom, and may prove himself to be free through his kinsmen, or by an instrument of manumission, or by a privilege, or that he is in a free condition beyond the power of his lords, in which cases he may defend himself, if he has proved his replication. But if he has none, or when he has it, he has not brought it forward, then at the last he shall be judged by an assise held after the manner of a jury, nor shall this prejudice him for the future as regards his *status*, whether the jury finds for him or against him, nor shall there be place for a conviction, because it is not held after the manner of an assise, nor does the objection of servitude touch the assise more than a convention, but the assise always

Britton, *ib.* § 7.

gra, licet per exceptionem elisa. Si autem capta fuerit assisa in absentia tenentis, vel si cùm præsens fuerit non exceperit, sed statim se posuerit in assisam, sive juratores dicant pro uno sive pro alio in articulis brevis & falsò, vel dicant fortè conventionem intervenisse, vel quòd querens servus sit vel bastardus, cùm non sit, vel aliud quid tale, quod posset esse exceptio si proponeretur a tenente, locus erit convictioni, quia capta est ista assisa, in modum assisæ & non juratæ, quasi consensu querentis sive parentis[1] non interveniente. Si autem cùm tenens absens sit nihil dicatur contra assisam, ex providentia boni & discreti justitiarii tenentur juratores reddere rationem dicti sui, & si postmodum de convictione agatur, excusare poterit juratores justa ignorantia, & justus error. In assisis autem omnibus præter magnam assisam locus erit convictioni generalitèr, nisi vertatur assisa in juratam propter aliquam quæstionem incidentem, quæ probari debeat per instrumenta & per testes vel per juratores (ut prædictum est). Et in magna assisa ideo non jacet convictio, quia cùm petens offerat se disrationare dictum suum, oportet quòd tenens se defendat vel per duellum vel per magnam assisam, per quod istorum duorum elegerit, & cùm de voluntate sua se capiat ad assisam, illam recusare non poterit, quod si fecerit, videtur quòd defensionem suam reprobaverit, sicut in assisis observatur, ubi quis se ponat in juratam aliqua ratione (ut prædictum est) non poterit juratorum dictum postmodum reprobari,[2] q̧ si faceret, nihil aliud esset q̧ facere probationem suam nullam, et ideo non admittitur convictio. Et sciendum quòd sunt assisæ sive juratæ sive inquisitiones de transgressionibus et

f. 290 b.

[1] "petentis, MS. Rawl. C. 160. | [2] "reprobare," MS. Rawl. C. 160.

remains entire, although parried by an exception. But if the assise be taken in the absence of the tenant, or if when being present he has not raised an exception but has forthwith put himself upon an assise, whether the jurors find for one or for the other upon the articles of the writ and falsely, or if they say by chance that a convention has intervened, or that the claimant is a serf or a bastard, when he is not so, or something else of such sort that it might be an exception, if it were propounded by the tenant, there will be place for a conviction, because that assise has been taken after the manner of an assise and not of a jury, the consent as it were of the plaintiff or claimant not intervening. But if when the tenant is absent, nothing is said against the assise, by the providence of a good and discreet judiciary the jurors are bound to give a reason for their finding, and if afterwards proceedings are taken for their conviction, a just ignorance and just error may excuse the jurors. But in all assises except a great assise there will be place for a conviction generally, unless the assise is turned into a jury on account of some question arising which may be proved by instruments and by witnesses and by jurors (as aforesaid). And in a great assise a conviction does not lie for this reason, because when the claimant offers himself to deraign his finding, it is incumbent on the tenant to defend himself either by the duel or by the great assise, by whichever of these he may choose, and when of his own will he betakes himself to an assise, he cannot refuse it, but if he should do so, it seems that he has disapproved his own defence, as is observed in assises, where a person has put himself on a jury, he cannot afterwards (as said above) for any reason disapprove the finding of the jurors, which if he should do, it would be nothing else than to render his proof null, and therefore a conviction is not admitted. And it is to be known that there are assises or juries or inquests concerning trespasses and other things, Likewise there are purgations, as if a crime or mis-

f. 290 b.

aliis. Item sunt purgationes, ut si crimen imponatur vel delictum, purgatio erit probatio innocentiæ. Item est defensio contra præsumptionem, quæ nec dicitur jurata sive inquisitio nec purgatio, scilicet ubi quis dicit aliquid esse & inde producit sectam, exinde sequitur defensio contra sectam, quasi probatio contra præsumptionem, & quandoque admittuntur plures defensiones quandoquè pauciores contra sectam, secundum quod alibi dicetur. Est tamen quędam jurata, quæ aliquando admittit convictionem, ut si fiat jurata de aliquo, quod tangat dominum regem et facit contra dominum regem, convinci poterunt juratores per alios; ut coram Martino de Pateshul de Henry de Movewedene, qui aliquando fuit in custodia domini regis tempore Huberti de Burgo. Jurata verò sive inquisitio non admittūt convictionem, et si calumnientur certa ratione, sequitur emendatio et mutatio juratorum vel aforciamentum. Si autem in juramento vel juditio aliquando erratum sit: videndum erit si error sit excusabilis vel crassa ignorantia ad hoc quòd mitigetur pœna, ut si factum de facili sciri non possit nisi per præsumptionem, ut si conventio vel contractus aliquis factus sit in occulto, ita quòd pauci præsentes extiterint, talis error excusabilis est: si autem in publico et palam et hoc ita, quòd omnes de patria hoc sciverint, et soli juratores hoc ignoraverint vel inde dubitaverint, non excusantur à perjurio, quia talis crassa est ignorantia. Si autem juratores factum narraverint, sicut veritas se habuerit, et postea factum secundùm narrationem suam judicaverint et in juditio erraverint, juditium potius erit fatuum quâm falsum, cùm credant tale judicium sequi tale factum. Et si justitiarii secundùm eorum dictum juditium pronunciaverint, falsam faciunt pronunciationem, et ideo sequi non deberent eorum dictum, sed illud emendare tenerentur per dili-

Britton, iv. ch. xi. §§ 2 and 3.

demeanor be imputed, the purgation will be the proof of innocence. Likewise there is a defence against a presumption, which is called neither a jury nor an inquest nor a purgation, to wit, where a person says that a thing is so and thereon produces a sect, thereupon there follows a defence against the sect, as it were proof against presumption, and sometimes several defences are admitted, sometimes fewer against a sect, according to what will be said below. There is however a certain jury, which sometimes admits a conviction, as if a jury be had concerning something which touches the lord the king, and makes against the lord the king, the jurors may be convicted by others, as before Martin de Pateshul concerning Henry de Movewedene, who was sometime in the wardship of the lord the king in the time of Hubert de Burgh. But a jury or an inquest does not admit of a conviction, and if they are in a certain manner perverse, an amendment and a change of the jurors or a reinforcement follows. But if there has been in some respect an error in the oath or in the judgment, it must be seen whether the error be excusable or crass ignorance, in order that the penalty may be mitigated, as if the act cannot be easily known except by a presumption, as if a convention or some contract has been made secretly so that few persons were present, error in such a case will be excusable, but if it has been done publicly and openly and so that all of the country know it, and the jurors alone have been ignorant of it or have doubted of it, they are not excused of perjury, because it is crass ignorance. But if the jurors have narrated the fact as the truth has been, and have afterwards judged the fact according to their narrative, and have erred in their judgment, their judgment will rather have been fatuous than false, when they believe such a judgment to follow such a fact. And if the justiciaries have pronounced judgment according to their finding, they make a false pronouncement, and therefore they ought not to follow their finding, but would be bound to amend it by diligent examination of it. But

gentem examinationem. Si autem dijudicare nesciant, recurrendum erit ad majus consilium. Item est quoddam sacramentum, quod defertur à parte parti in juditio vel a judice parti, in quo nulla sequitur convictio. Satis est enim, quòd Deum expectent ultorem. Item de damnis nulla erit convictio sed potiùs locum habet certificatio, ut si juratores nimis gravaverint disseysitorem in damnis, & in quo casu possunt certificare justiciarios in quibus & de quibus tot damna provenerint, & tale sacramentum deferetur a judice juratoribus ac si dubia dicerent vel obscura.

3. Ad quem pertinet capere convictionem et certificationem.

Videndum est etiam cui competat querela super convictione: & sciendum q ei competit, cui competit assisa vz. qui in seysina fuit nomine proprio & non alieno, ut procurator vel familia. Item competit ei contra quem præfertur assisa. Item videndum ad quem pertinet capere convictionem & certificationem, & sciendum quòd ei qui cepit assisam, quia ipse magis noverit veritatem, & hoc nisi aliqua certa ratione suspectus habeatur, & etiam sine alio brevi cùm potestatem habeat terminandi negotium, quia ad ipsum pertinet plenaria potestas judicandi in una assisa sicut in pluribus, nisi aliquid excipiatur specialiter in brevi de warãto, quia etsi aliqua causa licet simpliciter alicui delegetur, omnia videntur ei concessa, sine quibus causa explicari non possit. Cùm igitur convictio & certificatio dependeant ex assisa, nec sine convictione vel certificatione plenè terminari possit assisa, meritò pertinebit ad ipsum capere convictionem & certificationem, cui competit plena jurisdictio capiendi assisam. Item videndum, infra quod tempus capi debeat, & sci-

f. 291.

if they know not how to judge between them, they must have recourse to a greater council. Likewise there is a certain oath which is tendered by a party to a party in judgment or by a judge to a party, in which there is no conviction. For it is sufficient for them to wait for the vengeance of God. Likewise there shall be no conviction concerning damages, but a certification has rather place, as if the jurors have pressed too heavily on the disseysor with damages, and in which case they may certify the justiciaries in what matters and concerning what matters the damages have arisen, and an oath of such kind shall be administered by the judge to the jurors, as if their finding was dubious or obscure.

3. To whom it appertains to take a conviction and a certification.

We must see also who is entitled to complain concerning a conviction, and it is to be known that he is entitled to do so, who is entitled to bring an assise, to wit, he who was in seysine in his own name and not in another's name, as an agent or a domestic servant. Likewise he is entitled, against whom an assise is preferred. Likewise we must see to whom it belongs to take a conviction and a certification, and it is to be known that it belongs to him who has taken the assise, because he knows more the truth, and this unless he is for some certain reason regarded with suspicion, and even without another writ, since he has the power to determine the business, seeing that there pertains to him plenary power of judging in one assise just as in several, unless something be excepted specially in the writ of warranty, because although a certain cause be simply delegated to some one, all things seem to be allowed to him, without which the cause cannot be unravelled. Since therefore a conviction and a certification depend on the assise, and the assise cannot be fully determined without a conviction and a certification, it will deservedly appertain to him to take a conviction and a certification, who is entitled to the full jurisdiction of taking an assise. Likewise we must see, within what time it ought to be taken, and it is to be known that it ought

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endum quòd statim & recenter post captionem assisæ ab eo qui cepit assisam, alioquin transibit judicium assisæ in rem judicatam, ita q sine speciali præcepto domini regis post tempus capi non possit. Item ubi capi debeat, in com̃ vel extra, secundū quod fieri debet de assisis. Et sciendū q pro voluntate domini regis vel justiciarii in com̃ vel extra, ubicunq, assisa capta fuerit in com̃ vel extra, cùm dependeat ex assisa sicut facit certificatio. Et si ad hoc se habeat cōmunis libertas, q assisæ extra com̃ capi non debeant, non sequitur quòd propter hoc remaneant juratæ in com̃ capiendæ, aliud enim habet privilegium assisa & aliud jurata. Breve siquidem de sum̃onendo viginti quatuor ad convincendum duodecim tale est.

4. Breve ad summonendum viginti-quatuor.

Rex vic. salutem. Si talis fecerit te securū de clamore suo prosequendo, tunc sum̃oneas per bonos summonitores xxiiii. legales milites de visneto de tali villa, quòd sint coram justiciariis nostris ad primam assisam cùm in partes illas venerint, parati sacramento recognoscere, si talis injustè et sine judicio disseisivit prędictum talē de libero tenemento suo in tali villa post primam coronationē nostram apud Westminster, unde talis queritur quòd juratores assisæ novæ disseysinæ, quæ inde sumonita fuit & capta inter eos coram justiciariis nostris ultimò itinerantibus in com̃ tali, falsum fecerunt sacramentum. Et interim diligenter inquiras qui fuerunt juratores illius assisæ, & eos habeas ad præfatam assisam coram præfatis justiciariis. Et summoneas per bonos sum̃onitores præfatum talem, quòd tunc sit ibi auditurus illam recognitionem. Et habeas ibi summonitores & hoc breve & nomina militum. T. &c.

to be taken forthwith and recently after the taking of the assise by him who took the assise, otherwise the judgment of the assise will pass into an adjudicated case, so that without a special precept from the lord the king it cannot be taken after time has elapsed. Likewise where it ought to be taken, in the county or beyond it, according to what ought to be done in assises. And it is to be known that it is to be taken according to the pleasure of the king or of the justiciary in the county or beyond it, wherever the assise has been taken in the county or beyond it, since it depends on the assise as the certification does. And if the common liberty has a bearing on this, that assises ought not to be held beyond the county, it does not follow that on that account juries are bound to be held in the county, for an assise has one privilege and a jury another. The writ, for instance, for summoning twenty-four to convict twelve is of this kind.

4. A writ to summon twenty-four.

The king to the viscount greeting. If so-and-so has given you security for prosecuting his complaint, then summon by good summoners twenty-four loyal knights of the visne of such a vill, that they be present before our justiciaries at the first assise when they shall have come into those parts, prepared on their oath to recognise, if so-and-so unjustly and without a judgment has disseysed the person aforesaid from his free tenement in such a vill since our first coronation at Westminster, whereof so-and-so complains that the jurors of the assise of novel disseysine, which was summoned thereupon and held between them before our justiciaries on their last iter in such a county, have made a false oath. And meanwhile inquire diligently who were the jurors of that assise, and have them [in attendance] at the aforesaid assise before the aforesaid justiciaries. And summon by good summoners so-and-so aforesaid that he be there to hear that recognition. And have there the summoners and this writ and the names of the knights. Witness &c.

5. Aliud breve de assisa mortis antecessoris.

Aliquando fit hoc breve pro disseysitore, aliquando pro disseysito, aliquando pro communia pasturæ & turbariæ, & fossato levato, & hiis similibus. Rex vic. salutem. Si talis fecerit te securum de clamore suo prosequendo, tunc sum̄oneas per bonos sum̄onitores xxiiii. legales milites de visneto de tali villa, q̧ sint coram justiciariis nostris ad primam assisam cùm in partes illas venerint, parati sacramento recognoscere si talis pater, mater, avūculus vel amita, frater vel soror prædicti talis fuit seysitus vel seysita in dominico suo ut de feodo de tanto terræ cum pertinētiis in tali villa die quo obiit, & si obiit post primā coronationem R. regis avūculi nostri, & si idē talis ꝑpīquior ejus hæres sit, unde ipse talis querit̃ q juratores assisæ mortis ātecessoris, quæ inde summonita fuit & capta inter ipsum talem & talem coram justiciariis nostris ultimò itinerantibus in com̄ tali, falsum fecerūt sacramentū. Et interim diligenter inquiras qui fuerunt juratores illius assisæ, & eos habeas ad prefatā assisam coram præfatis justiciariis, & summoneas per bonos summonitores prædictum talem q̧ tunc sit ibi auditurus illam recognitionem, & habeas ibi summonitores, & hoc breve & nomina militum. T. &c.

f. 291 b.

6. Breve de assisa ultimæ præsentationis.

De assisa vero ultimæ præsentationis sic: Si talis fecerit te securum &c. Summoneas &c. quòd sint parati sacramento recognoscere quis advocatus tempore pacis præsentavit ultimam personam &c. Et sic totam formam brevis originalis, ut suprà de aliis assisis. Si autem super assisam ad recognoscendum utrum: eodem modo. Et per hoc q̧ forma brevis originalis inseri debet in brevi de convictione, videtur apertè quòd convictio tantum locum habeat de articulis in brevibus assisarum contentis, ubi nulla objicitur exceptio,

5. Another writ concerning an assise of mortdancester.

Sometimes this writ is used for the disseysor, sometimes for the disseysee, sometimes for common of pasture and of turbary, and the raising of a foss and such like. The king to the viscount greeting. If so-and-so has given you security for prosecuting his claim, then summon by good summoners twenty-four loyal knights from the visne of that vill, that they present themselves before our justiciaries at the first assise when they have come into those parts, prepared on their oath to recognise if so-and-so the father, or the mother, or the uncle or the aunt, or the brother or the sister of such person aforesaid was seysed in his demesne as of fee respecting so much land with its appurtenances in such a vill on the day on which he died, and if he died after the first coronation of king Richard, our uncle, and if such person aforesaid is his next heir, whereof such person aforesaid complains, that the jurors of the assise of mortdancester, which was summoned thereon and held between such person aforesaid and so-and-so before our justiciaries on their last iter in such a county, have made a false oath. And meanwhile do thou inquire who were the jurors of that assise, and have them present at the aforesaid assise before our aforesaid justiciaries, and summon by good summoners so-and-so aforesaid that he be there to hear that recognition, and have there the summoners and this writ and the names of the knights. Witness &c.

f. 291 b.

6. A writ for an assise of last presentation.

Concerning an assise of last presentation thus: if so-and-so has given you security &c. Summon &c. that they be prepared to recognise in their oath what advocate in the time of peace presented the last parson? And so the whole form of the original writ, as above concerning other assises. But if upon an assise of recognising whether [land is a lay fee or free alms] in the same way. But hereby inasmuch as the form of the original writ ought to be inserted in the writ for a conviction, it seems openly that a conviction only has place concerning the articles contained in the writs of assises, where no exception is objected, but it is held after the

sed capitur in modum assisæ. Et quòd ubi excipitur de conventione vel opponatur causa status vel hujusmodi, locum non habeat convictio, quia si opponitur, tunc vertitur assisa in juratam ad inquirendum de exceptione si dedicatur, vel non fiat secundum conventionem, & eo q necessitas juris partes ad hoc compellit. Ad diem summonitionis bene se poterit essoniare ille, qui summonitus est ad audiendam illam recognitionem, quia omnes quos recognitio tangit interesse debent, poterit enim summonitus multa dicere quare non debeat convictio procedere, vel si procedere debeat, dicere possit contra juratores & alia plura proponere, quare convictio remanere debeat ad tempus vel imperpetuum. Et excipi poterit per eum qui recuperaverit per assisam, ut si damna fuerint restituta in parte vel in toto, quia ante statum ejus plenè restitutum non procedet convictio, sicut nec placitum aliquod motum per eum qui amisit per assisam super proprietate. Item cadit convictio, si ille, qui de falso sacramento queritur, autoritate propria & sine judicio se posuerit in seysinam de tota re vel ejus parte aliqua. Præsentibus itaque partibus, si viginti quatuor non venerint, dabitur alius dies, & viginti quatuor attachiētur q sint ad illum diem. Præsentibus autem juratoribus & querente, si summoniti non venerint, attachientur, si autem querens non venerit, præsentibus juratoribus & illo de quo queritur, recedet jurata sine die (expectato tamen quarto die) & summonitores similiter, & querens & plegii sui de prosequendo in misericordia regis.

7. Qualiter accipi

Cùm autem partes in judicio comparuerint, in presentia xii. & viginti quatuor imprimis audiatur recor-

manner of an assise. And that when an exception is taken concerning a convention or a cause of *status* is objected or such like, a conviction has no place, because if it be objected, then the assise is turned into a jury to inquire concerning the exception if it be gainsaid, or if it is not raised according to the convention, and inasmuch as the necessity of the right compels the parties thereto. Upon the day of the summons he who is summoned to hear that recognition may well essoin himself, because all the persons whom that recognition affects ought to be present, for the party summoned may be able to say many things why the conviction should not proceed, or if it ought to proceed, he may speak against the jurors and propound many other things wherefore a conviction ought to be stayed for a time or in perpetuity. And exception may be taken by him who has recovered by the assise, as if damages have been restored in part or in whole, because before a full restitution of his state a conviction shall not proceed, no more than a plea moved by him who has lost by an assise upon the property. Likewise a conviction falls, if he, who complains concerning a false oath, has put himself into seysine of the whole estate or a part of it by his own authority and without a judgment. Upon the parties therefore being present, if twenty-four have not come another day will be given, and the twenty-four will be attached that they should be present on that day. But upon the jurors being present and the plaintiff, if those who have been summoned have not come, they shall be attached, but if the plaintiff has not come, whilst the jurors are present and the party against whom the complaint is made, the jury shall go away without a day (the fourth day having however been waited for) and the summoners in like manner, and the complainant and his sureties for the prosecution shall be at the king's mercy.

7. In what way the

But when the parties have appeared in judgment in the presence of the twelve and of the twenty-four, let

debet convictio.

dum assisæ secundum quod capta fuerit, & inquiratur a querente in quo vel in quibus xii. juratores falsum fecerint sacramentum, in uno articulo brevis, vel in pluribus, vel etiam in quæstionibus & exceptionibus incidentibus, si assisa capta fuerit in modum assisæ, & ubi nulla ꝑposita fuit exceptio a tenente secundum dicta post sacrament à juratoribus, & in quo casu locus erit convictioni si juratores malè juraverint in exceptionibus, sicut in articulis principalibus in brevi contentis: & secundum quod ita fuit, sicut querens dicit, vel non, procedat jurata per sacramentum viginti quatuor. Jurare autem debet in modum juratæ, & non in modum assisæ hoc modo.

8.

f. 292.

Hoc auditis justiciarii, quod veritatem dicam de hoc quod à me requiretis ex parte domini regis, & pro nihilo omittam &c. Et alii post eum jurabunt sicut in aliis juratis. Et cùm juraverint, justiciarius ostendat eis formam querelæ, & super quibus dicere debeant veritatem, scilicet utrum ille qui queritur injustè fuerit disseysitus vel non, & rationem dicti sui (si necesse fuerit) tenentur assignare, & secundum quod dixerint pro una parte vel pro alia, sequetur absolutio vel condemnatio. Forma verò irrotulationis talis esse debet. Jurata viginti quatuor ad convincendum xii. venit recognitura, si A. injustè & sine judicio &c. vel alio modo, secundum diversitatem assisarum et formam brevis de convictione. Et unde talis queritur quod juratores talis assisæ nuper captæ coram justiciariis talibus falsum inde fecerunt sacramentum, eo quòd dixerunt quòd prædictus talis disseysivit talem injustè & sine judicio, & non disseysivit eum sicut alius talis dicit. Et unde idem talis dicit quòd ita fuit vel ita,

the record of the assise be first read aloud according as it has been held, and let it be inquired from the complainant in what thing or in what things the twelve jurors have made a false oath, in one article of the writ or in several, or also in the incidental questions and exceptions, if the assise has been held after the manner of an assise, and where no exception has been propounded by the tenant according to the findings, after the oath of the jurors, and in which case there will be place for a conviction if the jurors have sworn wrong in the exceptions, as in the principal articles contained in the writ. And according as it has been so as the plaintiff says, or not, let a jury proceed by the oath of the twenty-four. But it ought to be sworn after the manner of a jury and not of an assise, in this manner.

conviction ought to be accepted.

8. Concerning the oath.

Ye hear this, justiciaries, that I will speak the truth concerning this which you shall require from me on the part of the lord the king, and for nothing will I omit &c. And the others after him shall swear as in other juries. And when they have sworn, let the justiciary show to them the form of the complaint, and on what matters they ought to say the truth, to wit, whether he who complains has been unjustly disseysed or not, and they are bound to assign the reason of their finding (if it be necessary) and according as they have found for one party or the other, an acquittal or a condemnation will follow. But the form of the enrolment ought to be of this kind. A jury of twenty-four came to hold a recognition for the conviction of twelve, if A. unjustly and without a judgment &c., or in any other manner according to the diversity of assises and the form of the writ of conviction. And whereof such a person complains that the jurors of such an assise lately held before such our justiciaries have made a false oath, inasmuch as they have said that such person aforesaid has disseysed so-and-so unjustly and without a judgment, and he has not disseysed him as so-and-so says. And whereon such person aforesaid says that it was in this manner

f. 292.

et sic tota irrotulanda erit narratio respondentis et excipientis contra juratores. Et cùm xxiiii. veredictum suum dixerint, dictum suum affirment rationibus et præsumptionibus, et diligenter sunt a justiciariis examinandi, et sæpius interrogandi de veritate, eo quòd nulla sequitur convictio, et quia sæpius decipiuntur xxiiii. sicut xii. et falsum quandoque faciunt sacramentum, vel fatuum sicut ipsi xii. et quandoque xxiiii. falsum dicunt ubi xii. verum dixerint. In dicendo verò veredictum suum, aut omnes concordes sunt, aut quidam concordes et quidam discordes, si autem discordes, associentur eis alii pro afforciamento, ut supra dictum est de assisis. Si autem nihil sciverint nec scire possint de veritate, per interrogationes sive examinationes, sive xii. verum dixerint sive non, remanebit suo loco possessio, quia querens nihil probat. Idem erit si dubitaverint, utrum ita sit sicut querens proponit vel non, quia querens non probat: quoties enim dubitatur an quid sit, perinde est ac si non esset illud. Si autem concordes veritatem dixerint et idem quod xii. juratores, vel idem et plura quàm xii. dixerunt, considerandū erit quòd xii. bene juraverunt et quòd tenens remaneat in seysina, et querens custodiatur in prisona gravi pœna pecuniaria redimendus. Si autem contraria dixerint xii., scilicet quòd talis fuit disseysitus vel non disseysit᷒, per hoc remanebunt convicti, et considerandū erit quòd prędicti xii. juratores malè juraverint, et quòd querens recuperet seysinam suam, & ille tenens in misericordia, et juratores si præsentes fuerint custodiantur, et si absentes, capian-

or in that manner, and so the whole pleading of the respondent and of the exceptor against the jurors will have to be enrolled. And when the twenty-four have given their verdict, let them affirm their finding by reasons and by presumptions, and they are to be diligently examined by the justiciaries, and to be questioned repeatedly concerning the truth, inasmuch as no conviction follows, and because twenty-four are frequently deceived just as twelve, and sometimes make a false oath or a fatuous oath just as the twelve, and sometimes the twenty-four say what is false, whilst the twelve have said what is true. But in pronouncing their verdict they are either all of accord, or some are of accord and the others are in disaccord, but if they are in disaccord let others be associated with them as a reinforcement, as has been said above concerning assises. But if they have known nothing nor can know any thing about the truth, by means of questioning and of examining, whether the twelve have spoken the truth or not, the possession shall remain in its place, because the complainant proves nothing. The same thing will happen if they have doubted, whether it is as the complainant propounds, or not, because the complainant proves nothing. For as often as it is doubted whether a thing be so, it is the same as if it were not so. But if they agree in their finding of the truth and find the same as the twelve jurors, or the same or more than the twelve jurors have found, it will have to be considered that the twelve have sworn well, and that the tenant should remain in seysine, and the plaintiff be kept in custody in prison to be redeemed at a heavy pecuniary penalty. But if they have found the contrary to the twelve, to wit, that so-and-so was disseysed or not disseysed, they shall thereby remain convicted, and it will have to be held that the aforesaid twelve jurors have sworn wrong, and that the plaintiff should recover his seysine, and the tenant be in mercy, and the jurors, if they are present, be kept in custody,

tur. Si autem viginti quatuor juratores varia dixerint et diversa, dum tamen in principali conveniant, secundum quod pro una parte dixerint vel pro alia, validum erit eorum veredictum. Si forte duodecim concordes non fuerint in assisa capienda sed discordes, poterunt viginti quatuor quosdam liberare, et quosdam damnare, sicut accidit de Alberto comite Somers̃.

Cap. V.

f 202 b.

1. Quæ sit pœna convictorum.

Pœna autem convictorū in prædictis assisis talis erit, q inprimis capiantur & in prisonam detrudātur & omnes terræ suę & catalla in manum domini regis capiantur, donec ad voluntatē domini regis redimantur, ita q nihil remaneat eis nisi tenementa sua nuda, & perpetuam infamiam incurrant, & legem terræ amittant, & ita q nunq̃ postea ad sacramentum admittantur, quia de cætero non erunt *Otheswort̄h*, nec ad testimonium recipientur, quia qui semel convictus est de perjurio præsumitur q iterum velit pejerare.

2. Qualiter excusantur.

Excusantur tamen quoad infamiam, sed non quoad pœnam redemptionis illi, qui juraverint salvo visu, & qui de novo assumpti sunt in ipsa captione assisæ, quia tales possunt non immeritò veritatem ignorare, quod quidem non est intelligendum de eis, qui primò electi sunt & summoniti ad recognitionē faciendam, visum facere cōtempserint, quia si hoc eis concedetur, sic possent lucrum deportare de contemptu, quod esse non debet. Item mitiùs agendum est cum eis quantum ad famam, licet non quantum ad pœnam redēptionis illius, scilicet qui post captionem assisæ ante convictionem (quasi

and if absent, be captured. But if the twenty-four jurors have found variously and diversely, whilst however they agree in the principal matter, according as they have found for one party or for the other party, their verdict will be valid. If by chance the twelve have not been of accord in taking the assise, but have been in disaccord, the twenty-four may set free some of them, and condemn the others, as happened in the case of Albert earl of Somerset.

Chapter V.

f. 292 b.

1. What is the punishment of the convicted.

But the punishment of those who are convicted in the aforesaid assises will be such, that they shall be first seized and thrust into prison, and all their lands and chattels taken into the hands of the king, until they are redeemed at the pleasure of the king, so that nothing remains to them but their bare tenements, and they incur perpetual infamy, and lose the law of the land, and so that they can never be admitted to an oath, because in other respects they shall not be oath's-worth, nor be received to give testimony, because he who is once convicted of perjury is presumed to be always disposed to commit perjury.

2. In what way they are excused.

They are excused however as far as regards infamy, but not as regards the penalty of redemption, who have sworn saving the view, and who are assumed anew during the holding of the assise, because such persons may not undeservedly be ignorant of the truth, which is not to be understood of those who were first chosen and summoned to make a recognition, and who have neglected to make a view, because if this were allowed to them, they might make a profit of their neglect, which ought not to be the case. Likewise milder proceedings may be taken with those as regards their character, although not as regards the penalty of redemption, who after the holding of the assise before their conviction

decepti) dictum suum emendare curaverint, ut inter placita quæ sequūtur regem, an. regni sui vicesimo primo, de assisa capta corā S. de Ropelay[1] & sociis suis in coñ Lync. de Lāberto filio Lamberti, & unde jurata viginti quatuor ad convincendum xii. summonita fuit coram rege extra coñ, & ubi ante convictionem se posuerint juratores in misericordiam domini regis, & ubi gravitèr redempti fuerunt. Item mitiùs agi poterit quàm cum prædictus juratoribus, cum illis, vz. qui sponte sine querela vel convictione læsam habent conscientiam de sacramento, cùm ducti fuerint justo errore, dictum suum correxerint, & in misercordiam se posuerint. Cùm autem capta fuerit jurata viginti quatuor extra coñ & illud idem dixerint viginti quatuor quod xii. vel si cùm jurata capta fuerit in coñ, dicat querens ꝗ seysinam suam plenè non habuerit, tunc fiat ei breve de habenda seysina in hac forma.

3. Breve, si, cum viginti quatuor acquitaverint duodecim de perjurio, dicant disseysiti, quod plene non habent seysinam suam.

Rex vicecomiti salutem. Scias quòd, cùm jurata viginti quatuor militū summonita esset in curia nostra &c. ad convincendū xii. juratores assisa[2] novæ disseysinę nuper summonitæ & captæ corā justiciariis nostris talibus apud talē locum, inter A. querentem & B. tenentē de tanto tenemento vel tanto terræ cum pertinentiis in tali villa, prædicti viginti quatuor venerint in eadem curia & super sacramentum suum illud idem dixerunt quod prædicti xii. juratores, s. ꝗ prædictus B. disseysivit prædictum A. de tali tenemento, tanta terra vel redditu. Et quia idem A. questus fuit ꝗ non habuit plenè seysinam suam de omnibus quæ prædicti xii. juratores ei dederūt per assisam, tibi præcipimus ꝗ idem tali A. plenariam seysinā de omnibus terris & tenementis & serviciis quæ prædicti xii. juratores ei dederūt per assisam, sine dilatione habere facias. Vel sic: Et ideo tibi præcipimus quòd eidem

[1] "Symond de Poppelay," MS. Rawl. C. 160.

[2] "assisæ," MS. Rawl. C. 160.

(having been as it were deceived) have taken care to amend their finding, as amongst the pleas which follow the king in the twenty-first year of his reign, an assise held before Simon de Ropelay and his associates in the county of Lincoln concerning Lambert the son of Lambert, and whereof a jury of twenty-four were summoned to convict twelve before the king beyond the county, and where before their conviction the jurors put themselves upon the mercy of the lord the king, and where they were heavily redeemed. Likewise proceedings of a milder nature than as regards the aforesaid jurors may be had towards those who spontaneously and without a complaint or conviction have their consciences wounded about their oath, when they have been led by a just error, and they have corrected their finding and put themselves upon the king's mercy. But when a jury of twenty-four has been held outside the county and the twenty-four have found the same verdict as the twelve, or if when the jury has been held within the county, the plaintiff says that he has not fully had his seysine, then let a writ issue to him concerning his having seysine in this form.

3
A writ if, when the twenty-four have acquitted the twelve of perjury, the parties disseysed say, that they have not fully their seysine.

The king to the viscount greeting. Know thou that, when a jury of twenty-four knights had been summoned in our court, &c., to convict twelve jurors in an assise of novel disseysine lately summoned and held before such our justiciaries at such a place, between A. as plaintiff and B. as tenant concerning such a tenement, or concerning so much land with its appurtenances in such a vill, the aforesaid twenty-four came in the same court, and upon their oath said the very same thing as the aforesaid jurors, to wit, that the aforesaid B. has disseysed the aforesaid A. of such a tenement, of so much land or rent: and because the said A. complained that he had not fully seysine of all the lands and tenements and services which the aforesaid twelve jurors gave to him by the assise, cause him without delay to have seysine of them. Or thus, and therefore we enjoin you that you give with-

tali A. plenariā seysinā de omnibus terris, tenementis, & serviciis quæ prædicti duodecim juratores ei dederunt per assisam illā sine dilatione &c. Et ipsum in seysina sua &c. Item si post captionem assisæ ante convictionem se posuerint duodecim juratores in misericordia domini regis & dictum suum emendaverint, tunc fiat tale breve de seysina habenda.

f. 293.

4. Breve, cum duodecim emendaverint.

Rex vicecom̄ salutem. Scias quòd, cùm jurata 24. sum̄onita esset ad convincendum 12. coram justiciariis nostris apud talem locum, ad recognoscendum utrum tantum terræ cum pertinentiis in tali villa esset laycum feodum talis de tali villa vel libera eleemosyna pertinens ad ecclesiam vel capellam talem de tali villa, unde prædictus talis questus fuit, quòd juratores assisæ, quæ inde summonita fuit & capta apud talem locū coram justiciariis ibidem itinerantibus, falsum fecerunt sacramentum, prædicti xii. juratores venerunt coram eisdem justiciariis nostris, & cognoverunt quòd malè inde juraverunt, et qui ꝑ transgressione sacramenti sui finem nobiscum fecerunt. Et super hoc venit idem, pro quo fecit assisa, s. & recognovit eidem querenti totam prædictam terram cum pertinentiis tenendam per idem servitium quod inde fecerat ante captionem assisæ. Ideò tibi præcipimus quod prædicto tali sine dilatione plenariam seysinam inde habere facias. Teste, &c. Si autem plures sunt querentes, tunc fiat cuilibet eorum seysina de certa parte. Et tunc dicatur quòd prædictis A., B. & C. sine dilatione plenariā seysinam inde habere facias, scilicet prædicto A. de tanto terræ & B. de tanto terræ et C. de tanto terræ. Teste, &c. Item possunt fieri brevia, ubiq;, et diversimodè, secundùm diversitatem judiciorum et concordiæ

out delay to the said A. plenary seysine of all the lands, tenements, and services, which the aforesaid twelve jurors gave to him by that assise, &c., and himself in his seysine, &c. Likewise if after the holding of the assise before the conviction the twelve jurors have put themselves on the mercy of the court and have amended their verdict, then let a writ of this kind for having seysine issue. f. 293.

4. A writ, when the twelve have amended their verdict.

The king to the viscount greeting. Know thou that, when a jury of twenty-four had been summoned to convict twelve before our Justiciaries at such a place, to make a recognition whether so much land with its appurtenances in such a vill was a lay fee of so-and-so in such vill or free alms appertaining to such a church or chapel in the said vill, whereof the aforesaid so-and-so has complained, that the jurors of the assise, which was summoned thereon and held at such a place before our justiciaries there itinerant, made a false oath, the aforesaid twelve jurors have come before our said justiciaries, and have acknowledged that they swore wrong thereupon, and have made a fine with us on account of the transgression of their oath. And thereupon came the same person in whose favour the assise was made and he acknowledged to the said plaintiff the whole of that land with its appurtenances to be held by the same service, which he had rendered thereon before the taking of the assise. Therefore we enjoin you that you cause the aforesaid so-and-so without delay to have plenary seysine thereof. Witness, &c. But if there are several plaintiffs, then let each of them have seysine made to him of a certain part. And then let it be said [in the writ] that you cause the aforesaid A., B., & C. without delay to have plenary seysine thereof, to wit, the aforesaid A. of so much land, and B. of so much land, and C. of so much land. Witness &c. Likewise the writs may be made for every place and in divers manners according to the diversity of judgments and the accord.

CAP. VI.

1. De remediis, et acceptionibus per quas differtur convictio.

Inter cætera verò videndum, an differri possit convictio ad tempus ope alicujus exceptionis, et est verum q sic, s. si objecerit tenens super quem venit convictio contra juratores q certis rationibus suspecti sunt, vel minùs idonei. Item si seysinam suam plenè non habuerit sicut illam recuperaverit coram justiciariis suis in parte vel in toto. Item si non sit eis satisfactum de damnis suis in parte vel in toto, et multas alias habere poterit exceptiones contra convictionem si voluerit. Item impedit convictionem re disseysina,[1] ut si ille qui per assisam amiserit iterum fecerit disseysinam versus eundem in toto vel in parte, quia sine judicio jus sibi usurpavit et ante convictionem, et ille qui sic sibi jus usurpavit de falso convincendo, querelam suam amittit. Item si quis in misericordiam inciderit pro disseysina, non remanebit misericordia exigenda, si ille qui amiserit quæsiverit convictionem. Differri autem non debet: quia certum est per assisam de disseysina facta, et de sequenti misericordia: incertum tamen est si xii. convinci possunt per juratam vel non, unde tenendum est certum et non incertum. Multi enim convictionem et certificationem requirunt, non ut per convictionem seysinam suam rehabeant, sed ut exactionem misericordiæ extinguant, vel saltem differant per cautelam. Item videndum si subsequatur remedium post veredictum xxiiii. juratorum et post judicium inde factum. Ad quod videndum utrum ille de quo queritur et xii. juratores convincendi in omnes juratores consenserint vel non, vel

Britton, iv. ch. ix. § 9.

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[1] "redisseysina," MS. Rawl. C. 160.

CHAPTER VI.

1. Of the remedies, and the exceptions whereby a conviction is put off.

Amongst other things we must see whether a conviction can be put off for a time by the help of an exception, and it is true that it is so, to wit, if the tenant upon whom the conviction comes has objected against certain jurors, that they are suspected for certain reasons, or are unfit. Likewise if he has not fully had his seysine, according as he has recovered it before his justiciaries in part or in whole. Likewise if they have not been satisfied for their damages in part or in whole, and he may have many other exceptions against a conviction, if he wishes. Likewise a renewed disseysine impedes a conviction, as if he, who has lost by the assise, has made a second time a disseysine against the same person in whole or in part, because he has usurped to himself the right without a judgment and before a conviction, and he, who has thus usurped to himself the right of convicting of falsehood, loses his own plaint. Likewise if any one has become liable to be amerced for a disseysine, the amercement shall not remain to be enforced, if he who has lost has applied for a conviction. But it ought not to be deferred, because it has been ascertained through the assise concerning the fact of the disseysine, and the consequent amercement. It is however uncertain if the twelve can be convicted by a jury or not, wherefore the certain is to be maintained and not the uncertain. For many persons apply for a conviction and a certification, not that they may recover their seysine by a conviction, but that they may extinguish the enforcement of the amercement, or at least defer it by a caution. Likewise it is to be seen if a remedy follows after the verdict of the twenty-four jurors and after the judgment pronounced thereupon. In regard to which it is to be seen, whether he, concerning whom complaint is made, and the twelve jurors to be convicted, have consented to all the twenty-four jurors or not, or have shown that several for a cer-

docuerint plures certa ratione esse amovendos, q si eis fuerit denegatum, et sub tali suspitione procedat, jurata erit omninò revocanda, quia non fit sine juris injuria, & amoveantur suspecti, & alii loco ipsorum substituantur, qui veritatem rei deponant ex integro. Et si in tales ab initio cōsensum fuerit, sed per justiciarios malè examinati & malè instructi, erit eis subveniendum, ut errorem suum corrigant & emendant, secundùm quod factum fuit coram ipso domino rege in præsentia Simonis de Segrave apud Woostoke in jurata xxiiii. ad convincendum xii. in com̃ Buck., inter Galfridum de Maundevill & Adam de Bono Fossato. Et unde convictio priùs capta fuit apud Windeslore coram Egelardo de Cygony [1] & sociis suis.

f. 293 b.

2. De remedio certificationis.

Britton, iv. ch. ix. § 9.

Item sub specie certificationis, poterit aliquando adhiberi remedium post convictionē, propter insufficientem examinationem justiciariorum in convictione, ut prędictum est. Ut si jurata xxiiii. dubiè dixerint, vel obscurè, vel variè, & in quo casu, possunt xxiiii. sum̃oniri ad certificandum de sacramento, quod inde fecerunt sicut in quacunq; assisa. Sed primò videndum qualiter sum̃onendi fuerint juratores ad certificandum in assisis quibuscunq;, & postea in juratis xxiiii. ad convincendum. Forma brevis de sum̃onendo juratores in assisis ad certificandum talis est.

3. Breve si duodecim summonendi sunt ad certificandum.

Rex vic. salutem. Præcipimus tibi quòd habeas coram nobis vel justiciariis nostris &c. corpora A. B. C. recognitorum novæ disseysinæ sum̃onitæ & captæ coram talibus justiciariis ultimò itinerantibus in com̃ tuo inter B. querentem & C. tenentem de tenemento

[1] "Elegardo de Cygony," MS. Rawl. C. 160. The same person is probably here meant, who is styled Engelardus de Cygoigny in the MS. Plea Roll. of 18 H. III. printed in vol. ii. Appendix iii. He is styled E. de Syngoy in Bracton's text, fol. 417, below.

tain reason are to be removed from the list, which if it be refused to them and the conviction proceeds under such a suspicion, the jury will have to be entirely recalled, because it has not proceeded without injury to right, and let the suspected persons be removed, and others substituted in their place, who may depose to the truth of the matter afresh. And if they have consented to such persons from the commencement, but they have been badly examined and badly instructed by the justiciaries, they must helped, so that they may correct and amend their error, according to what was done before the lord the king himself in the presence of Simon de Segrave at Woodstoke, in a jury of twenty-four to convict twelve in the county of Buckingham, between Galfridus de Maundevill and Adam of Good Dyke. And whereof a conviction was previously taken at Windeslore before Egelard de Cygony and his associates.

f. 293 b.

2. Of the remedy by a certification.

Likewise under the form of a certification, a remedy may sometimes be applied after a conviction on account of an insufficient examination on the part of the justiciaries in the conviction, as aforesaid. As if a jury of twenty-four have spoken dubiously, or obscurely, or variously, and in which case the twenty-four may be summoned to certify concerning the oath, which they made thereon as in any assise whatsoever. But in the first place we must see in what manner the jurors ought to be summoned to certify in any assises whatsoever, and afterwards in juries of twenty-four to convict. The form of a writ for summoning jurors in assises to certify is of this kind.

3. A writ if twelve are to be summoned to certify.

The king to the viscount greeting. We enjoin you that you have present before us or our justiciaries &c. the persons of A., B., C. the recognisors of a novel disseysine summoned and held before such justiciaries on their last iter in your county, between B. as plaintiff and C. as tenant concerning a tenement in such a vill, or

in tali villa, vel sic: præcipimus tibi q diligenter inquiras, qui fuerunt recognitores assisæ novæ disseysinæ &c. (ubi scilicet non cōstiterit curiæ de nominibus) & tunc totum ut supra: ad certificandum præfatos justiciarios nostros apud Westm̃ de sacramento quod inde fecerunt, vel sic: pleniùs de assisa illa, & interim prædictum tenementum in manum nostram capias, & illud in manu nostra salvo custodias, quousq, aliud inde præceptum nostrum habueris. Præcipimus etiam tibi quòd habeas coram præfatis justiciariis &c. corpus talis ad audiendum inde considerationem curiæ nostræ, & similiter judicium suum de pluribus defaltis, & habeas ibi nomina recognitorum, & hoc breve. Teste, &c. Brevius tamen poterit fieri breve in eadem forma. In eadem forma fieri poterit de omnibus aliis assisis sicut mortis antecessoris, & in aliis in quibus jacet convictio per xxiiii. Et tunc si sum̃oneantur primò justiciarii ad faciendum recordum, in fine sum̃oniri poterunt recognitores ad audiendum recordum illud, & si plures fecerint defaltas, tunc ad audiendum judicium de pluribus defaltis. Et semper ante omnia videndum erit recordum, ut sciri possit an juratores malè juraverint, ut tunc veniat jurata xxiiii. ad convincendum. Si autem dubiè vel obscurè, quòd tunc veniat eadem assisa ad certificandum, & hoc ꝑpter culpam juratorum. Si autem fiat querela de processu justiciariorū, tunc sum̃oneatur recordum. Si autem ꝑveniat querela post cōvictionē de sacramento xxiiii. juratorum, vel q malè juraverint, vel pro certa ratione suspecti & non amoti vel minùs sufficienter examinati, sub specie certificationis, cùm non sit locus cōvictioni, sunt iterum ad certificādum cōvocandi, & res ad debitum statum revoce-

thus: we enjoin you that you diligently inquire who were the recognisors of the assise of novel disseysine &c. (where forsooth it is not clear to the court concerning the names), and then the whole as above: to certify our aforesaid justiciaries at Westminster concerning the oath which they have made, or thus: more fully concerning that assise, and in the meanwhile take the aforesaid tenement into our hand and keep it safely in our hand until you have another precept from us thereupon. We enjoin thee also that thou have before our aforesaid justiciaries &c. the body of so-and-so to hear the decision of our court thereon, and at the same time its judgment concerning defaults, and have there the names of the recognisors and this writ. Witness &c. But a shorter writ may be drawn up in the same form. In the same form it may be done in all other assises as in that of mort-dancester, and in others in which a conviction by twenty-four lies. And then if the justiciaries are first summoned to make a record, at the end the recognisors may be summoned to hear that record, and if several have made default, then they may be summoned to hear judgment concerning several defaults. And always before everything the record must be read, that it may be known whether the jurors have sworn wrong, and then let a jury of twenty-four come for the purpose of convicting. But if they have sworn dubiously or obscurely that then the same assise shall come to certify, and this on account of the fault of the jurors. But if there be a complaint concerning the procedure of the justiciaries, then let a record be summoned. But if the complaint is brought forward after a conviction by the oath of twenty-four jurors, either that they have sworn wrongly, or are for a certain reason suspected and have not been removed, or have been insufficiently examined, under the form of a certification since there is not place for a conviction they are again to be convoked to certify, and let the matter be recalled to its due state, according

tur, secundùm q̧ superiùs paulò ante factū est p̧ tale breve in forma supradicta.

f. 294.
4.
Similiter de assisis quibuscunque.

Præcipimus tibi q̧ diligenter inquiras, qui fuerūt recognitores juratæ xxiiii. ad convincendum xii. quæ nuper sum̄onita fuit & capta corā talibus justiciariis de tanto teñto vel terræ cum p̧tinentiis in tali villa, & illos habeas coram nobis vel talibus justiciariis, ad certificandū præfatos justiciarios nostros de sacramento quod inde fecerunt, & de quibusdam articulis convictionem illam tangentibus. Et unde talis quæritur[1] q̧ prædicti 24. juratores, pro magna parte certa ratione suspecti, non erant amoti, vel sic: Et unde idem talis dicit q̧ prædicti 24. minùs plenè examinati fuerunt, & etiam poterit plures causas sufficientes prætendere, per quas corrigi poterunt dicta juratorum. Et interim diligenter inquiras, qui fuerunt recognitores ejusdem assisæ &c. ut supra.

Cap. VII.

1.
Breve de novo formatum, si post convictionem arramatam contingit mori aliquem eorum, inter quos assisa capta fuerat.

Contingit multotiens q̧, cùm post captionē assisæ arramata fuerit jurata 24. ad convincendum 12. in quacunq̧ assisa, q̧ ante captionē assisæ moriatur aliqua partium. Quo casu, durum esset querenti si convictio p̧pter hoc remaneret: unde de consilio provisum est, q̧, cùm nihil sit quod querenti imputari debeat propter negligentiam vel alio modo, provideatur ei per breve quod tale est. Rex vic. salutem. Si A. fecerit te securum de clamore suo &c. tunc sum̄oneas per bonos sum̄onitores 24. legales milites de com̄ tuo de tali visneto, q̧ sint coram justiciariis &c. parati sacramento recognoscere, si B. pater, vel mater, vel alius anteces-

[1] "queritur," MS. Rawl. C. 160.

to what has been said a little before by a writ of this kind in the form above said.

We enjoin you that you diligently inquire who were the recognisors of the jury of twenty-four to convict twelve, which was lately summoned and held before such justiciaries concerning such a tenement or so much land with its appurtenances in such a vill, and have them before us or such justiciaries, in order to certify the aforesaid our justiciaries concerning the oath which they have made thereupon, and concerning certain articles touching that conviction. And whereof so-and-so complains that the aforesaid twenty-four jurors, suspected for the great part for a certain reason, were not removed: or thus, and whereof the said so-and-so says that the aforesaid twenty-four were not fully examined, and he may allege many sufficient causes, wherefore the findings of the jurors may be corrected. And meanwhile diligently inquire who were the jurors of the same assise &c. as above.

f. 294.

4. In like manner concerning assises of any kind.

Chapter VII.

It happens very frequently that, when after the taking of an assise a jury of twenty-four has been instituted to convict twelve in any assise, that before the holding of the assise one of the parties dies. In which case it would be hard for the plaintiff, if the conviction should on that account be stayed, whence it has been provided by the council, that when there is nothing that ought to be imputed to the plaintiff on account of his negligence or in any other manner, provision should be made for his case by a writ of this kind: The king to the viscount greeting. If A. has given you security concerning his claim &c. then summon by good summoners twenty-four loyal knights of your county from such a visne, that they be present before the justiciaries, &c. prepared on their oath to recognise, if B. the father or the mother or

1. A writ drawn up anew, if after a conviction has been instituted, it happens that any one dies, between whom the assise was taken.

sor C. cujus hæres idem C. est, injustè & sine judicio disseysivit ipsum A. vel D. de N. filium & hæredem ipsius A. vel non, & unde assisa novæ disseysinæ alias vel nuper sum̄onita fuit & capta coram dilecto & fideli nostro tali, & per quam assisam idem B. recuperavit seysinā suam de prædicto tenemento versus prædictum A. cujus hæres idem D. est, si hæres quæratur. Et unde idem A. questus fuit q juratores prædictæ assisæ falsum fecerunt sacramentum, ita q jurata 24. ad convincendum 12. arramata fuit coram fideli & dilecto nostro tali, & remansit capienda eo q prædictus B. obiit ante captionem illius juratæ, & interim diligenter inquiras qui fuerunt juratores sive recognitores illius assisæ, & illos habeas ad præfatam assisam coram præfatis justiciariis. Et sum̄oneas per bonos sum̄onitores prædictum C. filium, vel fratrem vel sororem, vel nepotem, vel neptem prædicti B., s. si hæres teneat, vel si ille qui disseysinam fecit, vel hæredes ejus rem disseysitam ad alium transtulerint, tunc sum̄oneatur tenens sic. Et sum̄oneas &c. qui teñtū illud tenet de dono ipsius B. vel de dono talis filii & hęredis ipsius B. q tunc sit ibi auditurus illam recognitionem, & habeas ibi nomina militum, & hoc breve. Teste, &c. Si autem 12. juratores malè juraverint in assisa mortis antecessoris, & cùm arramata fuerit jurata 24. moriatur una partium.

2. Aliud de assisa mortis antecessoris ad convincendum duodecim.

Rex vic. salutem. Si A. fecerit te securum de clamore &c. tunc summoneas &c. 24. legales milites de visneto tali, quòd sint coram justiciariis &c. parati sacramento recognoscere, si B. pater C. de N. fuit seysitus in dominico suo ut de feodo, de tanto terræ &c. die quo obiit. Et si obiit post &c. Et si prædictus

other ancestor of C., whose heir the said C. is, has unjustly and without a judgment disseysed the said A. or D. de N., the son and heir of the said A. or not, and whereof an assise of novel disseysine at another time or lately was summoned and held before our beloved and faithful so-and-so, and by which assise the said B. recovered his seysine of the aforesaid tenement against the aforesaid A. whose heir the said D. is, if the heir complains. And whereof the said A. has complained that the jurors of the aforesaid assise have made a false oath, so that a jury of twenty-four has been instituted to convict the twelve before our faithful and beloved so-and-so, and its holding has been stayed inasmuch as the aforesaid B. has died before the holding of that jury, and in the meanwhile inquire diligently who were the jurors or recognisors of that assise, and have them at the aforesaid assise before our aforesaid justiciaries. And summon by good summoners the aforesaid C. the son, or the brother, or the sister, or the nephew, or the niece of the aforesaid B., to wit, if the heir is the tenant, or if he who has made the disseysine or his heirs have transferred the thing disseysed to another person, then let the tenant be summoned thus: and do thou summon &c. him, who holds that tenement by the gift of the said B. or by the gift of so-and-so, the son and heir of the said B., that he be then there in order to hear that recognition, and have there the names of the knights and this writ. Witness &c. If however the twelve jurors have sworn wrong in an assise of mortdancester, and when a jury of twenty-four has been instituted one of the parties dies:

2. Another writ concerning an assise of mortdancester to convict twelve.

The king to the viscount greeting. If A. has given you security concerning his claim &c., then summon &c. twenty-four loyal knights from such a visne, that they be present before our justiciaries &c. prepared by their oath to recognise if B. the father of C. de N. was seysed in his demesne as of fee, of so much land, &c. on the day on which he died. And if he died after &c. And

f. 294 b. C. propinquior hæres ejus fuit. Et unde assisa mortis antecossoris nuper vel aliquando sum̄onita fuit & capta &c. Et secundùm formam istam formentur brevia de omnibus assisis, de quibus locum habeat convictio, ubi una partium moriatur ante captionem illius juratæ, & inseratur semper tota vis brevis originalis, secundùm quod superiùs videri poterit.

Cap. VIII.

1. Quod non est assisa capienda super assisam, nec convictio super convictionem.

Non est assisa capienda super assisam, non magis quàm convictio super convictionem. Assisa verò novæ disseysinæ, cùm semel capta fuerit inter certas personas, de certa re, sive tenemento, sive pastura, inter easdem personas de eadem re, & eodem facto, & eodem modo disseysinæ, cùm petens semel recuperaverit per assisam, si iterum fiat disseysina recenter vel post longum intervallum, locus erit redisseysinæ & non assisæ novæ disseysinæ, si iterum disseysitus conqueri voluerit de redisseysina, si autem assisam impetraverit de secunda disseysina, & dicat quòd alias tenementum illud recuperavit per assisam, non erit ulteriùs assisa capienda, sed remanebit, si factum justiciariorum & rotulos vocaverit ad warantum, quòd si nihil horum fecerit, procedet assisa, secundùm quod fuerit impetrata, & sibi imputet, qui exceptionem de assisa capta priùs non apposuit. Et quid si opposuerit, & justiciarii exceptionem illam non admiserint, tunc injuriatum erit querenti, & ad querelam ejus factam justiciariis rettabitur. Sed cùm non opposuerit talem exceptionem, & postea

Britton, iv. ch. xii. § 6.

if the aforesaid C. was his next heir, and whereof an assise of mortdancester was lately or sometime summoned and taken &c. And according to this form let writs be prepared concerning all the assises concerning which a conviction has place, where one of the parties dies before the holding of that jury, and let the whole tenor of the original writ be inserted, according to what may be seen above.

f. 294 b.

Chapter VIII.

1. That an assise is not to be taken on assise, nor a conviction on a conviction.

An assise is not to be taken on an assise, any more than a conviction on a conviction. But an assise of novel disseysine, when it has once been held between certain persons, concerning a certain thing, whether a tenement or a pasture, if between the same persons concerning the same thing and by the same act and by the same mode of disseysine, when the claimant has once recovered by an assise, a disseysine be again effected recently or after a long interval, there will be place for a redisseysine and not for an assise of novel disseysine, if the person disseysed a second time has wished to complain respecting a redisseysine. If, however, he has sued out an assise concerning a second disseysine, and should say that he has otherwise recovered that tenement by an assise, an assise will not have to be continued any further, but will be stayed, if he has invoked as a warrant the act of the justiciaries and the rolls, but if he has done none of these, the assise shall proceed according to what has been sued out, and let him impute it to himself, who has not raised an exception concerning an assise having been previously held. But what if he has raised the exception and the justiciaries have not admitted it, then injury will have been done to the plaintiff, and upon complaint having been made by him the justiciaries shall be prosecuted. But when he has not raised any such exception, and it is afterwards

inveniatur quòd alia assisa inde priùs capta fuit, quæ quidem contraria fuit ultimæ assisæ, ut si in assisa novæ disseysinæ dicant juratores primi quòd non disseysivit, & ultimi contrarium, prima per ultimam non convincitur, quia assisa non convincit assisam, nec agitur de convictione. Sed si ille qui amisit per ultimam velit agere de perjurio & convictione, benè licebit ei, & si ille qui amisit per primam velit agere de perjurio de prima, non licebit, quia assisa illa per lapsum temporis transiit in autoritatem rei judicatæ. Item dicitur (si inter easdem personas), hoc verum est sive assisa novæ disseysinæ vel mortis antecessorum, sive alia quæcunq; ut si assisa novæ disseysinæ de tenemento, vel communia pasturæ proferatur, & unus ex pluribus cohæredibus vel participibus, qui jus habuerint in com̄uni in tenemento de quo disseysina facta est, versus unum recuperaverit per assisam, & alius particeps postmodum eundem disseysivit de eodem tenemento, & disseysitus cùm impetraverit sibi per assisam, vel cùm querelam fecerit de redisseysina, non erit altera assisa ulteriùs capienda de eadem re, licet ibi sint diversa capita, quia eadem persona censentur ꝑpter unicum jus q habent, sicut videri poterit de pluribus cohæredibus participibus, & unde sicut versus unum recuperaverit, ita recuperabit versus omnes. Idem verò dici poterit de assisa novæ disseysinæ de com̄unia pasturæ, ubi plures cohæredes, sive participes sive alii tenuerint in com̄uni aliquod tenementum, in quo unus vel plures habere debeant communiam, si unus particeps disseysinam fecerit sine suis participibus, vel sine consensu suorū participū, disseysitus ver- f. 295.

found that another assise has been previously held thereon, which was contrary to the last assise, as if in an assise of novel disseysine the first jurors should say that he did not disseyse, and the last the contrary, the first are not convicted by the last, because an assise does not convict an assise, nor is the proceeding for a conviction. But if he who has lost by the last assise wishes to proceed for perjury and a conviction, it shall well be allowable to him, and if he who lost by the first wishes to proceed for perjury concerning the first, it will not be allowed to him, because that assise by lapse of time has passed into the authority of a thing adjudged. Likewise it is said (if between the same parties), this is true whether it be an assise of novel disseysine or of mortdancester or any other whatever, as if an assise of novel disseysine concerning a tenement or common of pasture has been brought forward, and if one out of several co-heirs or co-parceners, who have a right in common in the tenement from which a disseysine has been effected, has recovered against one by an assise, and another co-parcener has afterwards disseysed the same person from the same tenement, and when the disseysed person has sued out a writ for an assise, or when he has made a complaint concerning the redisseysine, there is not to be held a further assise upon the same matter, although there be there divers heads, because they are considered to be the same person on account of the single right which they have, as may be seen concerning several co-heirs co-parceners, and hence as he will have recovered against one, so he will recover against all. The same thing indeed may be said concerning an assise of novel disseysine from common of pasture, where several co-heirs or co-parceners or others have held some tenement in common, in which one or more ought to have community, if one parcener without his co-parceners has effected a disseysine or without the consent of his co-parceners, the party disseysed shall have f. 295.

sus illum tantum habet actionem, & non versus alios participes, & cùm semel recuperaverit versus unum per assisam, si alii participes eundem postmodum disseysiverint de eodem tenemento, non erit assisa capienda super assisam, sed sine assisa recuperabit per assisam præcedentē, quia omnes participes sunt quasi unica ꝑsona propter jus unū, licet diversa capita. Et si assisa capta esset super assisam, ita et de eadē re, et de eodem jure, et quasi inter easdem personas dicere posset secunda assisa contrarium primæ, & sic esset prima captio frivola sive nulla.

2. **Ubi capi debet assisa super assisam, et ubi non, et ubi in assisa novæ disseysinæ.**

Poterit tamen capi assisa post assisam de eadem re, sed tamen inter diversas personas, quia ratione diversarū personarum non erit actio una sed diversa, ut contingit sæpius in assisa novæ disseysinæ, ubi plures disseysinæ factę sint de eadem re, cum ad plures manus devenerint[1] per plures disseysinas. Ut si A. fecerit primam disseysinam, & B. disseysiverit A., & C. disseysiverit B., et sic ulteriùs, ubi plures erunt disseysinæ & disseysitores & plures assisæ propter diversas personas, & plura placita facta quamvis de eadem re. Item capi poterit assisa super assisam inter easdē personas de eodem facto, propter diversitatem rei, ut si quis fuerit disseysitus & ꝑ assisam recuperaverit, si occasione illius seysinæ plus occupaverit quàm ad illum pertineat & quàm recuperaret per assisam, post intervallū capi poterit assisa, quia alia est res, & ideò diversa assisa. Si autem inde fiat querela recenter, locus erit certificationi per assisam & juratam,[2] ut sciatur quid & quantum ille qui recuperavit posuerit

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[1] "devenerit," MS. Rawl. C. 160. | [2] "juratores," MS. Rawl. C. 160.

an action against him alone, and not against the other co-parceners, and when he has once recovered by an assise against one, if the other co-parceners have disseysed the same person afterwards from the same tenement, an assise will not have to be taken after an assise, but without an assise he shall recover through the preceding assise, because all the co-parceners are as it were a single person on account of one right, although they are different heads. And if an assise has been held upon an assise, in this manner the second assise may, concerning the same thing and concerning the same right and as it were between the same persons find the contrary of the first, and so the first holding of an assise will have been frivolous or null.

2. When an assise ought to be taken on an assise, and when not, and when in an assise of novel disseysine.

But an assise may be taken after an assise concerning the same thing, but nevertheless between different persons, because by reason of the diversity of persons it will not be one action but divers, as happens repeatedly in an assise of novel disseysine, where several disseysines have been effected concerning the same thing, when they have come into several hands by several disseysines. As if A. has effected the first disseysine, and B. has disseysed A., and C. has disseysed B., and so further, where there shall be several disseysines and disseysors and several assises on account of divers persons, and several pleas made although on the same subject. Likewise an assise may be taken upon an assise between the same persons concerning the same act, on account of the diversity of the thing, as if a person has been disseysed and has recovered by an assise, and on the occasion of that seysine has occupied more than appertains to him, and than he recovered by the assise, after an interval an assise may be taken, because the thing is different and therefore the assise is different. But if there be made complaint recently, there will be place for a certification by an assise and jury that it may be known what and how much he who has recovered has

in visu suo & quantum ei dederūt. Item capi poterit assisa post aliam inter easdem personas & de eadem re, ꝑpter diversum factum, sed tamen post longū temporis intervallum, quia post primam disseysinam & ultimam medio tempore fieri poterit possessionis permutatio, & ille, qui priùs fuerit disseysitor, per translationem fieri poterit verus possessor. Item inter easdem personas et de eadē re capi possit assisa super assisam, ꝑpter diversum modū disseysinæ, ut si quis primò omninò ejectus à possessione per assisam recuperaverit, et postea ab eodem post intervallum impeditus, quo minùs uti possit vel commodè, per eundem capi possit assisa super assisam propter diversum modū disseysinæ. Et eodem modo si primus disseysitor uti voluerit in tenemento, quod tenens per assisam recuperaverit, carucatam imponendo contra voluntatem tenentis, vel averia immittendo ad pasturā, vel aliam servitutem imponendo tenemento quod liberum esse debet, de tali modo disseysinæ post intervallum capi poterit assisa super assisam.

3. Ubi in assisa mortis antecessoris.

In assisa verò mortis antecessoris non est assisa capienda super assisam de eadem re inter easdem personas, licet benè possit inter diversas. Duo enim heredes portare poterunt diversas assisas de eadem re, de morte duorū antecessorum simul & semel. Et quo casu, de ultima seysina erit judicandū, de seysina verò duorū antecessorū nō erit capienda assisa suꝑ assisā inter easdē ꝑsonas de eadē re, ut si aliqua terra data fuerit A. & B. uxori suæ, si A. prius moriatur seysitus, adhuc non cōpetit hæredi assisa de morte A.

placed in his view and how much they have given to him. Likewise an assise may be taken after an assise between the same persons and about the same thing, on account of a diverse act, but nevertheless after a long interval of time, because after the first disseysine and the last, in the intermediate time a change of possession may take place, and he who was formerly a disseysor may by a transfer have become the true possessor. Likewise between the same persons and concerning the same thing an assise may be taken upon an assise on account of a diverse mode of disseysine, as if a person, who has been at first altogether ejected from possession, has recovered by an assise, and afterwards has been impeded by the same person after an interval from using the thing altogether or for his convenience, an assise upon an assise may be taken by the same person on account of the different manner of the disseysine. And in the same way if the first disseysor has wished to make use of the tenement, which the tenant has recovered by an assise, by imposing a carucate against the will of the tenant, or by sending cattle in to pasture, or by imposing some other service on the tenement, which ought to be free, concerning such a mode of disseysine an assise upon an assise may be taken after an interval.

3. When in an assise of mortdancester.

But in an assise of mortdancester an assise is not to be taken upon an assise concerning the same thing between the same persons, although it well may between different persons. For two heirs may bring different assises concerning the same thing, concerning the death of two ancestors together and at one time. And in which case judgment will have to be given concerning the last seysine, but concerning the seysine of the two ancestors an assise will not have to be taken on an assise between the same persons concerning the same thing, as if a certain land has been given to A. and to B. his wife, if A. should die first seysed of it, the heir is not yet entitled to an assise concerning the death of A. during the lifetime of B.

in vita ipsius B. nec e contrariò. Sed cùm uterq; moriatur, de seysina ejus qui ultimò moritur seysitus, cōpetit hæredi assisa mortis antecessoris: sed si assisa fecerit cōtra hæredem propter donationem ipsius qui ultimò obiit seysitus, non erit recurrendum ad aliam assisam de morte illius qui primò obiit. Item si terra data fuerit ita alicui in maritagium cum uxore sua, non erit assisa mortis antecessoris capienda nisi tantum de morte matris, & unde si per assisam de morte matris nihil ceperit, ad seysinam de morte patris recurrere non poterit per assisam.

f. 295 b.

4. Ubi in assisa ultimæ præsentationis.

Item in assisa ultimæ præsentationis non erit assisa capienda super assisam, si de alia captione excipiatur. Si autem per errorem capiatur, cùm nulla facta sit mentio de prima, locus erit convictioni de secunda, non de prima: cùm nulli eorum sit de jure fides adhibenda.

5. Ubi in assisa utrum.

In assisis verò ad recognoscendum utrum, nūquā erit assisa capienda super assisam, licet aliquando locum habeat convictio, quia jus determinat & possessionē, & dat exceptionem, & statim transit in autoritatem rei judicatæ.

6. Quod non capitur convictio super convictionem.

Itē nō erit capienda cōvictio sup convictionē, non magis q̃m assisa super assisam. Et unde videndū erit si cōvictio sequatur cōvictionē, utrū eadē sit assisa de qua priùs capta fuit convictio, & eadem res vel diversa, & utrū ille & eædem personæ vel diversæ. Si autem una & eadem persona & eadem res, & eadem assisa, nunquā capietur cōvictio super convictionē, licet alio modo sequatur emēdatio sub specie certificationis p examinationē, secundū quod in captione assisarum ob-

nor the contrary. But when both are dead, the heir is entitledto an assise of mortdancester concerning the seysine of him who died last seysed, but if the assise has made against the heir on account of the donation of him who died last seysed, recourse will not have to be had to another assise concerning the death of him who died first. Likewise if land has been so given to any one in maritage with his wife, an assise of mortdancester will not have to be taken except only concerning the death of the mother, and whereof if he has taken nothing by the assise concerning the death of the mother, he will not be able to have recourse to an assise on the death of the father.

f. 295 b.

4. When in an assise of last presentation.

Likewise in an assise of last presentation an assise is not to be taken on an assise, if any exception is raised concerning the holding of the first. But if it be taken through error, when no mention has been made of the first assise, there will be place for a conviction concerning the second, but not concerning the first, since faith is not of right to be given to either of them.

5. When in an assise of Utrum.

But in assises to recognise whether [a tenement is a lay fee or frank-almoigne], an assise will never have to be taken on an assise, although a conviction has sometimes place, because it determines the right and the possession, and it supplies an exception, and it forthwith passes into an adjudged case.

6. That a conviction is not taken on a conviction.

Likewise a conviction will not have to be taken on a conviction, no more than an assise on an assise. And hence we must see if a conviction follow a conviction, whether it is the same assise concerning which a conviction has previously been had, and the same thing or divers, and whether he and the same persons or divers. But if it be one and the same person and the same thing and the same assise, a conviction will never be taken on a conviction, although an amendment may follow in another manner under the form of a certification through an examination, according to what is observed in the

servatur. Si autem diversæ sint personæ, & res diversæ, & assisæ diversæ (secundum q videri poterit multotiens per recorda) bene sequitur convictio super convictionem. Ex captione autem unius assisæ quandoque sequitur una convictio, quandoq; duæ (ut videtur) secundum quod juratores totam rem quam querens posuerit in visu suo parti uni dederint vel abstulerint, vel secundū quod ejus partem quod quis posuerit in visu suo parti uni dederint, vel abstulerint, & quo casu, duæ sequuntur convictiones (ut videtur), ut si juratores totum dedisse debuerunt vel abstulisse, ubi dederunt partē vel abstulerunt, secundū q videri poterit per exemplum. A. posuit in visu suo duas carucatas terræ, & juratores dicunt q non fuit disseysitus nisi de una tantū, A. recuperat per assisam unam tantū versus B. & uterq in misericordia, B. propter injustam detentionem de una carucata, & A. pro falso clamore de alia, A. postea dicit q juratores male juraverint, eo quòd non dederunt ei duas carucatas terræ, & quærit convictionē, & B. similiter, eo quòd ei abstulerunt unam carucatam, cùm nullam disseysinam fecerit ut dicit, & sic videtur prima facie quòd duę convictiones sequi debeant unicā assisam & unicum veredictum, & si duæ convictiones sequi debeant, tunc videndū erit utrum expediri debeant per unicam juratam, vel per duas. Sed si per duas, ex hoc sequi posset quòd quilibet illarū alteri posset esse cōtraria, & sic nunquā ꝑduci posset negotium ad effectum. Et si examinatio interveniret, vix aut nunquā possent juratæ convenire, quia difficile est pluralitatem convenire, sicut universitatē. Meliùs est igitur quòd per unicā juratam ꝓcedat convictio, q̃m per duas, propter unicā assisam. Itē

holding of assises. But if there be different persons and different things and different assises (according to what may be seen manywise by the records), a conviction follows properly on a conviction. But from the holding of one assise sometimes there follows one conviction and sometimes two (as it seems), according as the jurors have given to one party or taken away from one party the whole thing which the plaintiff has placed in his view, or according as they have given to one party or taken away from one party a portion only of that which a plaintiff has placed in his view, and in which case two convictions follow (as it seems), as if the jurors ought to have given or to have taken away the whole, where they have given or have taken away a portion, according to what may be seen by an example: A. has placed in his view two carucates of land, and the jurors say that he has only been disseysed of one carucate. A. recovers by the assise one carucate only against B., and each is amercible, B. on account of his unjust detention of one carucate, and A. for his false claim concerning the other. A. says afterwards that the jurors have sworn wrong, inasmuch as they have not given to him the two carucates, and he seeks a conviction; and B. in a similar manner, inasmuch as they have taken away from him one carucate, since he has made no disseysine as he says, and so it appears at first sight that two convictions ought to follow a single assise and a single verdict; and if two convictions ought to follow, then we must see whether they ought to be dispatched by a single jury or by two. But if by two, it may thereby follow that one of them may be contrary to the other, and so the business be never brought to an effective conclusion. And if an examination should intervene, the juries could seldom or never agree, because it is difficult for a plurality to agree just as a whole body. It is better therefore that the conviction should proceed by a single jury than by two, on account of the single

esto q A. portet assisam super B. de una carucata terræ. A. recuperat p assisam unā carucatā versus B. Item A. occasione unius carucatæ quam recuperavit, occupat aliam quam in visu suo non posuerat, de una carucata autem competit convictio B. de qua juratores juraverūt, de alia verò occupata competit ei assisa novæ disseysinæ: & si procedat assisa novæ disseysinæ de carucata occupata, & juratores malè juraverint de ea, cōpetit B. alia convictio: quo casu sequuntur duæ juratæ & duæ convictiones, quia diversæ sunt assisæ, & diversa tenementa, & diversi jurati: & bene procedunt duæ, si diversis temporibus capiantur. Et sic poterant inter easdem personas duæ sequi convictiones, dum tamen diversæ sint res, & diversæ assisæ, & diversi jurati, si autem uno tempore capi debeant, benè poterit uterq, per juratam unicam expediri. Contingit multotiens quòd cùm juratores senserint & perceperint se malè jurâsse in toto vel in parte, si pœnitentia ducti veniant & velint emendare dictum suum, quæritur an possint? Ad quod erit distinguēdum, utrum hoc fecerint ante juditium redditum, vel post: si ante, bene poterunt: ut de itinere M. de P. in com̃ Lincoln., assisa mortis, si Petrus filius Wymundi de terra in Hoggestorp, dicebant ibi q decepti fuerunt, sed redempti fuerunt: & hæc fuit ante juditium, quia dictum fuit q illi, qui amisisse debuerunt per primum dictum suum, tenerent in pace. Si autem post juditium, non erit locus pœnitentiæ, quia stabitur juditio, & ille cōtra quem judicatum fuerit pquirat sibi (si voluerit) per convictionem, & ille qui p juditiū obtinuit, utatur seysina sua donec amiserit p convictionē. Si autem se abstinuerit ex secundo juditio, & perquisiverit sibi per certificationē, tunc si juratores tenue-

f. 296.

Britton, iv. ch. xii. § 5.

assise. Likewise let it be that A. brings an assise against B. for one carucate of land. A. recovers by the assise one carucate from B. Likewise A. on the occasion of the one carucate which he has recovered occupies another carucate, which he has not placed in his view. f. 296. B. is entitled to a conviction concerning the one carucate concerning which the jurors have sworn, but concerning the other occupied by A. he is entitled to an assise of novel disseysine, and if an assise of novel disseysine proceeds concerning the carucate occupied by A., and the jurors have sworn wrong concerning it, B. is entitled to another conviction, in which case two juries and two convictions follow, because the assises are different, and the tenements are different, and the jurors are different; but if they are to be taken at the same time, both may well be dispatched by a single jury. It happens manywise that when the jurors have felt and perceived that they have sworn wrong in whole or in part, if led by repentance they come and wish to amend their finding, it is asked whether they can do so. Upon which a distinction will have to be made, whether they have done this before judgment has been delivered or afterwards: if before, they may well do so, as in the iter of Martin de Pateshull in the county of Lincoln, an assise of mortdancester, if Peter the son of Wymund, concerning a land in Hoggestorp, they there said that they had been deceived, but had been redeemed, and this was before judgment, because it was found that those, who ought to have lost by their first finding, should keep their land in peace. But if after judgment has been given, there will be no place for repentance, because the judgment must be maintained, and he against whom it has been adjudged may seek redress for himself by a conviction, and he who has gained his suit by the judgment, may enjoy his seysine until he loses it by a conviction. But if he has abstained from a second judgment, and has sought redress for himself by a certification, then if the

rint se ad primum dictum suum, ille qui amisit per primum juditium agat de convictione. Si autem se non tenuerint ad primum dictum suum, sed ad secundum: tunc ille qui amisit per secundum juditium perquirat convictionem.

jurors have kept themselves to their first finding, he who has lost by the first judgment may proceed for a conviction. But if they have not kept themselves to their first finding, but to their second, then he who has lost by the second judgment may apply for a conviction.

TRACTATUS SEXTUS

LIBRI QUARTI,

IN QUO TRACTATUR

DE ACTIONE DOTIS.

CAP. I.

f. 296.

1. Ubi actio dotis potest terminari.

Dictum est supra de acquirendo rerum dominio, & causis acquirendi rerum dominia: & qualiter acquiruntur res ex causa dotis, & qualiter dos constituitur, & qualiter assignetur mulieri post mortem viri, & de quibus rebus, et de quibus non, cùm fuerit dos deliberata et sine contentione: Nunc autem dicendum est si contentiosa fuerit et non deliberata, qualiter recuperanda sit dos per actionem dotis, ideo de actione dotis videndum, ubi debeat intentari et terminari. Et sciendum, quòd actio dotis, ubi mulier nihil habet, non potest alibi terminari q̃m in curia domini regis, et ideo, quia si mulieri dotem petenti objiciatur ꝗ nunquam fuit viro (cujus nomine dotem petit) legitimo matrimonio copulata, vel si duæ mulieres contendant inter se in dotis petitione quæ illarū sit uxor legitima, demandari debet inquisitio facienda episcopo loci vel alio ordinario, à rege et à nullo alio, & plures possunt esse causæ aliæ. Si autem aliquam partē habuerit de dote, tunc locū

f. 296 b.

Britton, v. ch. iv. § 1.

THE SIXTH TREATISE

OF

THE FOURTH BOOK,

WHICH TREATS OF

AN ACTION FOR DOWER.

CHAPTER I.

f. 296.

1. Where an action for dower may be determined.

We have spoken above concerning the acquiring the dominion of things, and the cause of acquiring the dominion of things, and in what manner things are acquired by reason of dower, and in what manner dower is appointed, and in what manner it may be assigned to a woman after the death of her husband, and of what things it may be assigned and of what things not, when dower is delivered and without contention: we must now however say, if dower has become a subject of contention and has not been delivered, how dower is to be recovered by an action for dower. We must see accordingly concerning an action for dower, where it ought to be instituted and determined, and it is to be known that an action for dower, where a woman has nothing, cannot be determined anywhere else than in the court of the lord the king, and for this reason, because if it be objected to a woman claiming dower that she was never coupled in lawful matrimony to the man, in whose name she claims dower, or if two women contend between themselves in a claim of dower, which of them is his lawful wife, the inquest ought to be committed to the bishop or other ordinary of the place by a mandate from the king and from no one else, and there may be many other causes. But if she has had any part of the dower, then there is no

f. 296 b.

nō habet istud breve de recto de dote, ubi nec duellum, nec magna assisa, nec essoniū de malo lecti locū habet. Si autem de dote sua nihil fuerit ei assignatum, tunc cōpetit ei actio dotis versus quoslibet possidētes, q ei restituatur dos sua cū fructibus medio tempore pceptis, & percipiendis, à tempore mortis viri sui: nisi ipse qui in possessione extiterit justam habeat causam litigandi & resistendi: ut si warantū habuerit, & cùm illum vocaverit & per juditium amiserit, escambiū suū consequetur. Et si unus vel plures deforciātes fuerint in uno com̄ degentes, omnes simul in uno brevi poterunt cōprehendi, si autem in diversis com̄, tunc fiant brevia diversa propter diversitatem comitatuū. Forma brevis talis est.

Britton, *ib.* § 3.

2. Breve de dote rationabiliter constituta.

Rex vic. salutem. Præcipe A. q justè &c. reddat B. quę fuit uxor C. rationabilem dotem suam, quæ eam cōtingit de libero tenemēto quod fuit ipsius C. quōdā viri sui in tali villa: & si plures fuerint tenentes, tūc sic. Præcipe &c. tali, q justè &c. ut supra, & ita deinceps, ut omnes qui tenentes sunt & manentes in eodem com̄ comprehendantur in brevi, & tunc dicatur: Et unde nihil habet ut dicit, & ita quòd hæc dictio (nihil) referatur ad dotem, & non ad villam nominatam, in qua dos est quæ petitur, & tunc sic: & unde queritur quòd prædictus talis ei deforciat. Et nisi fecerit, & prædicta B. fecerit te securū de clamore &c. tunc summoneas per bonos summonitores præfatū A. vel præfatos tales (si plures sint) quòd sint coram justiciariis nostris apud West. tali die, vel ad primam assisam cùm in partes illas venerint, ostensuri quare non fecerint, & habeas ibi summonitores

place for a writ of right concerning dower, where neither battle nor the great assise nor an essoin of a sick bed has any place. But if no part of her dower has been assigned to her, then she is entitled to an action for dower against any persons in possession of it, that her dower be restored to her with all the profits which have accrued in the meantime or are to accrue since the death of her husband; unless the person who is in possession has a just cause of litigation and resistance, as if he has a warrantor, and when he has called him and he has lost by the judgment, he will obtain an equivalent. And if there be one or more deforcers living in the same county, they may be all comprised in one writ; but if in different counties, then let different writs issue on account of the different counties. The form of the writ is of this kind

2. A writ of dower reasonably appointed.

The king to the viscount greeting. Enjoin A. that he justly &c. restore to B. who was the wife of C. her reasonable dower, which belongs to her from the free tenement which was C's., formerly her husband, in such a vill: and if there be several tenants then thus: Enjoin &c., so-and-so, that he justly &c., as above, and so in succession, so that all who are tenants and remaining in the same county be comprised in the writ, and then let it be said, and whereof she has nothing as she says, and so that this term "nothing" is referred to the dower and not to the vill mentioned, in which is situated the dower which is claimed, and then thus: and whereof she complains that so-and-so aforesaid has deforced her, and unless he do so and the aforesaid B. has assured you of her claim &c., then summon by good summoners the aforesaid A., or such persons aforesaid, if there are several, that they be before our justiciaries at Westminster on such a day, or at the first assise when they shall have come into those parts, in order to show wherefore they have not done so, and have there the summoners and this

& hoc breve. Teste &c. Et notandum quòd breve istud locum habet, tam ad dotem nominatam recuperandam q̃m non nominatam, quamvis non exprimatur in brevi, quòd nominatim inde dotata fuerit: quia hoc in narratione supplebitur. Si autem ad diem summonitionis non venerit nec se essoniaverit, capiatur terra in manum domini regis per defaltam, secundùm quod observatur de defaltis per breve de recto. Si autem se essoniaverit ad primũ diem, dabitur ei alius dies per essonium suum, ad quem diem si defaltam fecerit, fiat ut supra. Et quo casu, recuperabit mulier dotem per defaltam, sive defaltam fecerit antequàm comparuerit, sive post, per magnum cape vel per parvum. Item recuperabit mulier dotem pro defectu waranti, ubi tenens petit auxilium curiæ, & non est secutus versus warantum: ut coram M.[1] anno decimo, de Alex. de Walepole & Gracia uxore ejus versus Johannem filium Roberti.

Cap. II. & III.

1. Qualiter mulier proponere debet intentionem. f. 297.

Cum autem partes in juditio comparuerint, proponat mulier per se vel per attornatum suum intentionem suam in hunc modum, cùm dotem petierit non nominatam. Hoc vobis ostendit B. quæ fuit uxor C. quod A. injustè deforceat ei tertiam partem tantæ terræ cum pertinentiis in tali villa, & ideò injuste, quia prædictus C. quondam vir suus inde eam dotavit ad ostium ecclesiæ, quando eam desponsavit, & qui inde eam dotare potuit, & si hoc cognoscere voluerit hoc gratum ei erit, et si non, habet sufficientem disrationationem, vel inde producat sectam sufficientem.

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[1] "coram M. de P.," MS. Rawl. C. 160.

writ. Witness, &c. And it is to be noted that this writ has place, as well to recover a dower which is specified as a dower which is not specified, although it be not expressed in the writ, that she had been specifically endowed thereof, because that will be supplied in the pleadings. But if on the day of the summons he has not come, nor has essoined himself, let his land be taken into the hand of the king by default, according to what is observed in defaults by a writ of right. But if he shall have essoined himself on the first day, another day shall be given to him through his essoin, upon which day if he shall have made default, let it be done as above. And in which case the woman shall recover her dower by default, whether he has made default before he has appeared, or after by the great *cape* or the little *cape*. Likewise the woman shall recover her dower through failure of a warrantor, where the tenant has claimed the aid of the court and has not followed it up against a warrantor as before Martin in the ninth year (of the king), concerning Alexander de Walepole and Grace his wife against John Robertson.

Chapters II. and III.

1. In what manner a woman ought to propound her declaration. f. 297.

When indeed the parties have appeared in judgment, let the woman propound by herself or by her attorney her declaration in this manner, when she shall have claimed a dower without specification. B. who was the wife of C. declares to you that A. unjustly deforces her of a third part of so much land with its appurtenances in such a vill, and unjustly for this reason, because the aforesaid C. formerly her husband endowed her with it at the door of the church, when he espoused her, and who could endow her with it, and if he will acknowledge this, it will be grateful to her, and if not, she has a sufficient deraignment, or may produce thereon a sufficient sect. The declaration of the woman in the case of a

Formatur etiam aliter intentio mulieris in dote nominata hoc modo, scilicet, B. quæ fuit uxor C. de N. petit versus A. tale manerium vel tantam terram cum pertinentiis in tali villa ut dotem suam, unde prædictus C. quondam vir suus eam nominatim dotavit ad ostiū ecclesiæ die quo eam desponsavit, et sicut ille qui eam inde dotare potuit. Et si &c. ut supra. Et ita variatur intentio & petitio dotis, licet non varietur breve. Exceptio contra mulierem quòd petere non possit per se, vel quia virum habet non sine viro, vel si cum viro petat, non habet probationem. Item quòd non sine waranto de dote sua.

2. De visu petendo.

Et ostensa taliter mulieris petentis intentione, poterit bene tenens visum petere, si velit, sic dicendo simpliciter, Peto visum: vel dicendo sic, Peto visum de tota terra, unde talis petit tertiam partē in dotem. Si autem dicat, Peto visum de tertia parte quam talis petit in dotem, denegabitur ei visus. Et post visum petitum, jacebit essoñ sicut in aliis placitis.

3. De vocatione waranti.

Britton, v. ch. v. § 1.

Et post essoñ & dilationes legitimas poterit tenens warantum vocare, si warantum habuerit, vel respondere in propria persona sua, & exceptiones proponere si quas habuerit. Si autem warantum vocaverit, tunc fiat breve de summonendo warantum in hac forma. Sed si nesciverint[1] warantum nominare, mulier statim recuperabit dotem suam, et tenens in misericordia: ut de itinere M.[2] in coñ Suff., anno xii., de Agneta quæ fuit uxor Rufi & Rogero de Berners. Rex vic. salutem. Summoneas per bonos summonitores C. de N. quod sit coram justiciariis nostris &c. tali die ad warantizandum A. tertiam partem vel tantam terram cum perti-

[1] "nesciverit," MS. Rawl. C. 160. "Sed si nesciverint" down to "De "Berners," omitted in MS. Reg. 9. E. xv.

[2] "de itinere M. de P.," MS. Rawl. C. 160.

specified dowry is also drawn up in another form, to wit: B. who was the wife of C. of N. claims against A. such a manor or so much land with its appurtenances in such a vill as her dower, wherewith the aforesaid C. formerly her husband endowed her specifically at the door of the church on the day on which he espoused her, and as he who could endow her therewith. And if &c, as above. And thus the declaration and claim of dower is varied, though the writ may not be varied. An exception against a woman that she cannot claim by herself, or because she has a husband not without her husband, or if she claims with her husband, she has no proof. Likewise that she cannot claim without a warrantor of her dower.

2. Of claiming a view.

And upon the declaration of the woman the claimant being thus stated, the tenant may claim a view, if he wishes, by simply saying thus, "I claim a view," or by saying thus, I claim a view of the whole land, whereof so-and-so claims a third part as her dower. But if he should say, I claim a view of the third part which so-and-so claims as her dower, the view shall be denied to him. And after the view has been claimed, an essoin will lie as in other pleas.

3. Of the calling of a warrantor.

And after the essoins and legitimate delays the tenant may call a warrantor, if he has one, or may answer in his own person, and propound exceptions, if he has any. But if he has called a warrantor, then let a writ be issued for summoning the warrantor in this form. But if they cannot name a warrantor, the woman shall recover immediately her dower, and the tenant shall be at mercy: as in the iter of Martin in the county of Suffolk in the twelfth year, concerning Agnes, who was the wife of Rufus, against Roger de Berners. The king to the viscount greeting. Summon by good summoners C. of N., that he be present before our justiciaries, &c. on such a day to warrant to A. the third part or so much land with its appurtenances in such a vill, which

nentiis in tali villa, quam B. quæ fuit uxor C. in curia nostra coram justiciariis nostris &c. clamat in dotem versus prædictum A. Et unde idem A. in eadem curia nostra coram eisdem justiciariis nostris vocavit eundem C. ad warantum versus prædictum B. Et habeas ibi summonitores & hoc breve. Teste &c. Ad quem diem se poterit uterq, essoñ, sicut alibi de warantis.

Cap. IV.

1. De exceptionibus generalibus contra breve, si warantum non habuerit.

Si autem tenens warantum non habuerit, tunc aut mulieri petenti restituat dotem, aut proponat exceptiones, si quas sibi viderit esse competentes. Et inprimis proponat exceptiones contra breve, quæ sunt generales ad omnia placita, ut si error inveniatur & hujusmodi. Et tunc proponatur (si aliqua fuerit) specialis ad hoc breve, ut si partem dotis habuerit, cadit breve: ut de itinere M. de P. in comitatu Eborum, anno regni regis Henrici tercio, de Alicia quæ fuit uxor Adæ filia Petri. Ad hoc facit quod habetis in eodem itinere de Alicia quæ fuit uxor Hugonis de Alencester, & alibi per totum, ex quo continetur in brevi quòd nihil habet, quia mendax precator carere debet impetratis, nec valere debet mulieri petenti talis replicatio si dicat, q nihil dotis habeat in tali villa, licet in alia, cùm hec dicto[1] (nihil) respiciat tantum dotem[2] in quibuscunq, villis, & non unicam partem in una villa, secundum quod probatur in ultimo itinere M. de P. in coñ Lync., de Helewiza, quæ fuit uxor Wasæ. Sed refert utrum aliquid habuerit ante brevis impetrationem vel post. Si post impetrationem, licitè recipere poterit partem quando voluerit. Si autem ante impetrationem partem recepèrit ad cautelam, poterit

f. 297 b.

Britton, v. ch. x. § 1.

[1] "dictio," MS. Reg. 9. E. xv.
[2] "totam dotem," MS. Reg. 9. E. xv., et MS. Rawl. C. 160.

B. who was the wife of C. claims in our court before our justiciaries &c. as her dower against the aforesaid A. And whereof the said A. in our same court before the same justiciaries has called the said C. as a warrantor against the aforesaid B. And have there the summoners and this writ. Witness, &c. Upon which day each may essoin himself, as elsewhere concerning warrantors.

Chapter IV.

1. Of general exceptions against the writ, if [the tenant] has not a warrantor.

But if the tenant has not a warrantor, then let him either restore to the woman her dower or let him propound his exceptions against the writ, which are general against all pleas, as if an error should be found and such like, and then let a special exception (if there be any) be propounded against this writ, as if she has had a part of her dower, the writ abates : as in the iter of Martin de Pateshull in the county of York, in the third year of the reign of King Henry, concerning Alice who was the wife of Adas and the daughter of Peter. This is supported by what you have in the same iter concerning Alice who was the wife of Hugh of Alencester, and elsewhere throughout the whole, since it is recited in the writ that she has nothing, because a mendacious suitor ought to be deprived of what she has obtained, (f. 297 b.) nor ought such a replication to avail a woman as claimant, if she should say that she has nothing of dower in that vill, although in another, since this phrase "nothing" regards only dower in certain vills, and not a single part in one vill, according to what is proved in the last iter of Martin de Pateshull in the county of Lincoln, concerning Elouise, who was the wife of Wasa. But it matters whether she has had something before the suing out of the writ or afterwards. If after the suing out, she might lawfully receive a part when she pleased. But if she has received a part before the suing out for a caution, she may represent him in the

illum qui restituerit in brevi exprimere, ac si non restituisset, & sic dicere & respondere ad exceptionem, quòd talis ei satisfecit. Si autem illum in brevi non nominaverit, obstabit exceptio & cadit breve.

Cap. V.

1. Quod mulieri petenti dotem non tenetur quis respondere sine waranto de dote sua, non magis quam ipsa mulier debet respondere sine waranto suo.

Proposita igitur intentione mulieris, si nihil sit quod excipi poterit contra breve, tunc inprimis petatur à tenente, quòd mulier dotem petens ostendat warantum suum per quem dotem petit, ut sciri possit quid juris habeat in duabus partibus, quia quicunq; mulieri dotem deforciaverit alius ab hærede, nunquàm mulieri respondebit nisi voluerit sine waranto de dote sua, non magis quàm ipsa mulier, si implacitata esset de dote sua aliis sine waranto suo responderet, et inde aliquando datur custodi exceptio cōtra mulierē petentē dotē, q priùs dotem non habeat antequam hæredē pducat: ut si illum frauduleter subtraxerit et occultaverit vel alienaverit, si hoc probari possit quòd p eam subtractus fuerit vel amotus, & si inde dubitetur, veritas per patriam poterit declarari, et medio tempore actio dotis remanebit in suspenso. Et q warantus exigi debet, ut sciri possit quid juris habuerit in duabus partibus: pbatur de termino Sancti M., anno regis H. xiiii. incipiēte xv. in com̄ Warr̄, de Johanne filio Elfridi, ubi dicitur quòd quędam mulier petiit dotem versus aliam mulierem de tenemento, de quo vir suus feoffatus fuit per virum mulieris tenentis, cui ipsa in vita sua cōtradicere non potuit: & unde ipsa tenens recuperaverat seysinā suam erga virum mulieris petē-

writ who has restored it, as if he had not restored it, and so say and answer to the exception, that such person has satisfied her. But if she has not named him in the writ, the exception will be an obstacle, and the writ will abate.

CHAPTER V.

1. That to a woman claiming dower a person is not bound to answer without a warrantor for her dower, no more than the woman herself ought to answer without her warrantor.

The declaration of the woman having been propounded, if there be nothing which can be excepted against the writ, then let it be in the first place claimed by the tenant, that the woman who claims dower disclose her warrantor through whom she claims dower, that it may be known what right he has in the two parts, because whoever other than the heir deforces a woman of her dower, shall never answer to the woman, unless he wishes so, without a warrantor concerning her dower, no more than the woman herself if she be impleaded about her dower shall answer to other persons without her warrantor, and hence an exception is sometimes allowed to a guardian against a woman claiming dower, that she cannot have dower before she produces the heir; as if she has fradulently withdrawn or hidden or alienated him, if it can be proved that he has been withdrawn or removed by her; and if there be doubt thereon, the truth may be declared by the country, and meanwhile the action for dower shall remain in suspense. And that a warrantor ought to be required, that it may be known what right he has in the two parts, is proved in the term of St. Michael in the fourteenth and fifteenth years of king Henry, in the county of Warwick, concerning John the son of Elfrid, where it is said that a certain woman claimed dower against another woman from a tenement, wherewith her husband had been enfeoffed by the husband of the woman the tenant, whom she during his lifetime could not contradict, and whereof the said tenant had recovered her seysine against the husband of the woman the claimant. And

tis. Et unde ubi manifestum fuit, quòd mulier petens habere non potuit dotem, quia hæres viri sui nihil juris habuit in duabus partibus. Idem (ut videtur) dici poterit de muliere, cujus vir feloniam fecerit, quia hęres felonis nihil juris habet in duabus partibus. Et quòd talis amittere debet dotem, ꝓbatur de termino Sancti Michaelis anno regis H. xiiii. incipiente xv., de Ernaldo de Camerīī in com̄ Kanc. in placito dotis, nec mulier regressum habebit de warantia versus capitalem dominum, cujus eschaeta terra illa fuerit: nec ad dotem recuperandam, quia ipse non est hæres, nec tenet ut hæres, sed ut eschaetam suam pro defectu hæredis. Quod quidem dici non poterit de eschaeta de bastardo, quia ibi est capitalis dominus loco hæredis quantum ad dotem restituendā, quia si ibi sit hæredis defectus, tamen non est ibi delictum. Idem erit de terra data in maritagio, licet revertatur pro defectu hæredis, uxor dotem obtinebit. f. 298.

2. Si warantus fuerit ad fidem regis Franciæ.

Item si warantus fuerit ad fidem domini regis Franciæ, & excipiatur de waranto, remanebit dotis exactio in suspenso imperpetuum, vel ad tempus saltem, donec terræ fuerint communes. Et quòd dotem habere non debeat, inveniri poterit de termino Sancti H. anno regis H. xvii. in com̄ Lync. et North., de Eudone de Calethorp, quia vir suus ad idem judicabitur quantum ad duas partes, licet jus habeat. Et sicut dominus capitalis haberi debet loco hæredis & loco waranti, ad quem terra revertitur pro defectu hæredis, eodem modo habere debet assignatus per modum donationis. Si mulier[1] dotem suam habere non possit, quia est in partibus transmarinis in Terra Sancta, expectandū erit

[1] "Si mulier" down to "Roberti Bryton," omitted MS. Reg. 9. E. xv.

whereof it was manifest that the woman the claimant could not have her dower, because the heir of her husband had no right in the two parts. The same as it appears may be said of a woman, whose husband has committed felony, because the heir of a felon has no right in the two parts. And that such a woman ought to lose her dower is proved from St. Michael's term in the fourteenth and fifteenth years of king Henry, in the case of Ernaldus de Camerina, in the county of Kent, in a plea of dower; nor shall the woman have recourse for her warranty against the chief lord, whose escheat that land has become, nor for the recovery of her dower, because he is not the heir nor does he hold it as heir, but as his escheat from failure of heirs. Which cannot be said concerning an escheat in the case of a bastard, for there is a chief lord in the place of an heir as far as restoring the dower, because if there be a failure of heirs, there is however no delict there. The same will happen in the case of land given as a marriage portion, although it may revert [to the lord] through failure of an heir, the wife shall obtain her dower. f. 298.

2. If the warrantor shall be in the fealty of the king of France.

Likewise if the warrantor shall be in the fealty of the king of France, and exception be taken against the warrantor, the exaction of dower shall remain in suspense in perpetuity, or for a time only, until the lands shall have become common. And that she ought not to have dower may be found in the term of St. Hilary in the seventeenth year of king Henry in the county of Lincoln and Northampton, concerning Eudo de Calethorp, because her husband shall be judged in the same manner as regards the two third parts, although she has the right. And as a chief lord ought to be considered in the place of an heir and in the place of a warrantor, to whom the land reverts from failure of an heir, a person assigned by means of a donation ought to hold it in the same manner. If a woman cannot have her dower because [the heir] is in parts beyond the sea in the Holy Land, he

in causa dotis, donec venerit: ut de itinere M. de P. in com̃ Eborū anno regis H. tertio, de Matylda quæ fuit uxor Roberti de Haywarde et Alexandro filio Radulphi. Item si tenēs sine waranto respondere noluerit, ita nec ejus warantus eum warantizabit, quia habet illud idem remediū: vt de itinere M. de P. in com̃ Lync. anno regis H. quarto, de Dernia, que fuit uxor Roberti Bryton. Cùm autē hujusmodi exceptio proponatur cōtra mulierem, non erit omni tempore in potestate sua ꝓducendi hæredem et warantū de dote sua, & ideo fiat breve vic. in hac forma.

3. Breve ad producendum hæredem ad warantum de dote.

Rex vic. salutem. Sūmoneas per bonos summonitores A. de N. q̧ sit coram justiciariis, &c. ad warantizandū B. quæ fuit uxor C. de N. dotem ipsius B. quā in eadem curia nostra &c. clamat versus D., et unde idem D. dicit q̧ non vult ei inde respondere sine waranto suo de dote sua &c., et habeas &c. Teste &c. Item notandū, q̧ si aliquando competat domino capitali hujusmodi exceptio contra mulierem, q̧ warantū ostendat de dote sua, non tamen competit ei, cui ille dominus capitalis custodiam alicujus terre dimiserit, ut de termino S. M. an. regis H. 8. incipiēte ix. in com̃ Warr̃, de Johanne de Marr̃ et Eva uxore ejus et W. de Cantulupo.

4. Si alium producerit, quam verum.

Cùm autē objiciatur hujusmodi exceptio mulieri, et contētio habeatur inter coheredes, quis eorum rectior hæres, pendēte litigio remanebit dotis actio: et eodem modo si mulier prægnans petens vel alia (ut videtur) donec de partu constiterit, quia si falsum warantum

must be awaited in a cause of dower, until he arrives: as in the iter of Martin de Pateshull in the county of York in the third year of king Henry, concerning Matilda who was the wife of Robert de Haywarde, against Alexander the son of Ralph. Likewise if the tenant is unwilling to answer without a warrantor, and his warrantor will not warrant him, because he has that same remedy, as in the iter of Martin de Pateshull in the county of Lincoln, in the fourth year of king Henry, concerning Dernia, who was the wife of Robert Bryton. But when this kind of exception is propounded against a woman, it will not always be in her power to produce the heir and warrantor of her dower, and so let a writ issue to the viscount in this form.

3. A writ to produce the heir as a warrantor concerning dower.

The king to the viscount greeting. Summon by good summoners A. of N. that he be present before our justiciaries &c. in order to warrant to B. who was the wife of C. of N. the dower of the said B. which she claims in our court, &c. against D., and whereof the said D. says that he is not willing to answer thereon without her warrantor concerning her dower &c., and have &c. Witness &c. Likewise it is to be noted, that if a chief lord is sometimes entitled to an exception of this kind against a woman, that she should show a warrantor for her dower, he however is not so entitled, to whom that chief lord has demised the custody of a certain land, as in the term of Saint Michael in the eight and ninth years of king Henry, in the county of Warwick, concerning John de Marre and Eve his wife against William of Cantelupe.

4. If she has produced another than the true one.

But when this kind of exception has been objected to the woman, and there has been a contention amongst the coheirs which of them is the more right heir, the action for dower will abate pending the litigation, and in the same way if a pregnant woman be the claimant or another as it seems, until the birth has been ascertained, because if she has named or produced a false warrantor,

nominaverit vel ꝓduxerit, scilicet aliū quàm verum hæredem, amittit dotem: ut de ultimo itinere M. de P. in com̄ Eborū anno regis H. x., de quadam Juliana, quæ dotem petiit. Et quid, si contentio habeatur inter cohæredes quis eorū hæres legitimus sit, remanere debet loquela de muliere dotem petente, donec discutiatur quis hæres rectior, secundū quod inveniri poterit inter placita quæ sequuntur regem anno regis H. xxi., assisa mortis antecessoris in com̄ Bark., de Galfrido filio Johannis & Gunora de Bendenger. Item de hac materia, de termino Paschæ an. regis H. viii. in com̄ Bark., de Gunora quę fuit uxor[1] I. filii H. et Matylda de B. Et unde Matylda respōdit q Gunora dotē habere nō debuit, quia ꝓdict9 I. fuit vir suus & non ipsius G. & unde Galfridus filius ipsius Matyldæ et ipsius Johannis, qui fuit in custodia talis, fuit warātus suus de dote sua, & vocavit ipsum ad warantum versus prædictam Gunoram, & unde prædicta G. dixit quòd prædicta Matylda warantum habere non debuit, quia ipsa nunquàm fuit sponsa ipsius Ihohannis, ꝑ q ipse Galfridus debet esse warantus suus, sed dixit ipsa Gunora quòd ipsa fuit sponsa ipsius Ihohannis & de eo habuit prolē talem, s. Et Matilda dixit quòd ipsa fuit sponsa ipsius Ihohannis & in seysina de eo tempore mortis suæ, & q in vita ipsius Ihohannis nunquā fuit matrimoniū inter eos accusatum vel solutū. Item filius alicujus mulieris poterit esse warantus alterius mulieris de dote sua, sed mulier nullā dotē habebit, ut si divorciū fact̄ fuerit inter aliquos propter consanguinitatē, compaternitatem, vel aliam affinitatem, vel aliam

f. 298 b.

[1] ".uxor Johannis filii Hugonis et Matilda de Berners," MS. Reg. 9. E. xv.

to wit, another than the true heir, she loses her dower, as in the last iter of Martin de Pateshull in the county of York in the tenth year of king Henry, concerning a certain Juliana, who claimed dower. And what if a contention should take place between coheirs as to which of them is the legitimate heir, the suit concerning the woman claiming dower ought to stand over, until it should be discussed who is the more right heir, according to what may be found amongst the pleas which follow the king in the twenty-first year of king Henry, an assise of mortdancester in the county of Berks, concerning Godfrey the son of John and Gunora de Bendenger. Likewise on this matter in Easter term in the eighth year of king Henry in the county of Berks, concerning Gunora who was the wife of John the son of Hugh against Matilda de Berners. And whereupon Matilda answered that Gunora ought not to have dower, because the aforesaid John was her husband, and not the husband of the said Gunora, and wherefore Godfrey, the son of the said Matilda and the said John, who was under the guardianship of so-and-so, was her warrantor for her dower, and she called him to warrant against the aforesaid Gunora, and whereupon the aforesaid Gunora said that the aforesaid Matilda ought not to have a warrantor, because she was never the spouse of the said John, wherefore the said Godfrey ought to be her warrantor; but the said Gunora said that she was the spouse of the said John, and she had by him such offspring, to wit. And Matilda said that she was the spouse of the said John and in seysine of him at the time of his death, and that during the life of the said John the matrimony between them was never challenged nor dissolved. Likewise the son of a certain woman may be the warrantor of another woman concerning her dower, but the woman shall have no dower, as if a divorce has taken place between them on account of consanguinity, compaternity, or any other affinity or

f. 298 b.

causam quācunq, & quæ multiplex est; si vir aliam postmodum duxerit uxorem, filius primæ mulieris hæres remanebit, sed mater dotem suam non habebit, quia duæ mulieres de eadem hæreditate ratione unius viri dotem non habebunt: nec debet hæres aliquis duabus mulieribus dotē petentibus respondere, secundū quod inferius dicetur, quia ubi nullum matrimoniū, ibi nulla dos, et sic à contrario sensu ubi matrimonium, ibi dos. Et ideo in prima uxore quādiu duravit matrimonium; duravit dotis constitutio et exactio. Et eodē modo (ut videtur) dici poterit, si mulier serva copulata sit libero et ducta in libero tenemento, q locata sit libero thoro, quòd partus habebit hæreditatē, & mater nullā dotem, quia mortuo viro suo libero redit in pristinum statum servitutis, nisi hæres ei dotem fecerit de gratia: quia dotis natura est, ut durante matrimonio duret dotis exactio, soluto matrimonio solvatur, quia sine eo esse non potest, sed est divortiū et separatio thori, quia non potest quis habere duas uxores simul & semel legitimas, licet aliquando plures habeat de facto, non tamen de jure habere poterit nisi unam, cùm matrimoniū sit conjunctio viri et mulieris individuam retinens consuetudinem vitæ; non dicit virorum et mulieris nec viri & mulierum, quia nec unus vir plures mulieres, nec una mulier plures viros habere potest de jure, potest tamē de facto habere plures, & unam tantū de jure, & ita quòd aliquando nulla illarum quæ petit poterit esse legitima, quia illa quæ legitima est non est præsens vel præmortua, et unde quæ semel illegitima est nunquàm legitima fieri potest, ita quòd nulla illarum quæ petit dotem obtinebit.

Britton, v. ch. ii. § 2.

any other cause whatsoever, and which are manifold: if a husband has afterwards married another wife, the son of the first wife shall remain heir, but his mother shall not have dower because two women shall not have dower from the same inheritance by reason of one husband, nor ought any heir to answer to two women claiming dower, according to what will be stated below, because where there is no matrimony, there is no dower, and so in the opposite sense where there is matrimony, there is dower. And therefore in the case of the first wife, as long as matrimony lasted, the appointment and the exaction of dower lasted. And in the same way, as it appears, it may be said, if a female serf be coupled with a free man and be conducted into a free tenement and placed in a free bed, that the offspring shall have the inheritance, and the mother no dower, because upon the death of her free husband she returns to her former state of serfdom, unless the heir grants to her dower as an act of grace; because the nature of dower is, that whilst matrimony lasts, the exaction of dower lasts, when matrimony is dissolved, it is dissolved, because it cannot exist without it, but there is divorce and separation from bed, for a man cannot have two legitimate wives at once and together, although he may sometimes have more than one in fact, he cannot however have of right more than one, since matrimony is the joining together of a man and woman maintaining an indivisible habit of life: it is not said to be the joining together of men and a woman, nor of a man and women, because neither can one man have of right several wives, nor one woman have several husbands, he may however have in fact several wives, and one only of right, and in such a manner that sometimes none of those who claim can be a legitimate wife, because she who is the legitimate wife is not present or is predeceased, and whereupon she, who is once illegitimate, can never become legitimate, so that none of those who claim shall obtain dower.

5. De duabus mulieribus contendentibus de dote.

De duabus mulieribus de dote sua ratione unius viri contendentibus, tenens neutri earum respondebit, donec in foro ecclesiastico discussum fuerit, quæ illarum uxor legitima dici debeat, & quæ in petitione dotis debeat prævalere: ut inferius plenius dicetur in fine. Cùm igitur dicat tenens quòd non debeat duabus mulieribus vel pluribus respondere, inprimis videndum an sit contentio de hæreditate inter duos vel plures, qui dicunt se esse hæredes legitimos. Cùm igitur de successione & de dote simul & semel quæstio habeatur, semper præjudicialis erit actio hæreditatis, et priùs terminari debet: ne si contingat mulieres ad curiam Christianitatis transmitti ad probandum quæ illarum sit legitima, et una illarum se probet esse legitimam in foro ecclesiastico, & hæres alterius mulieris in foro seculari se probaverit hæredem legitimum, sic contingeret alium esse warantum alterius mulieris de dote sua, quod esse non potest. Igitur cùm quælibet illarum ab initio dicat filium suum esse warantum de dote sua, ad vitandum illud inconveniens, oportet ut priùs discutiatur, quis hæres legitimus et cujus mulieris debeat esse warantus de dote sua, & per hoc terminabitur quæstio dotis. Cûm autem unus hæredum fuerit in possessione hæreditatis, justè vel injustè, & mater sua in possessione dotis, & mulier quæ nihil habuerit dixerit se esse legitimam & petat dotem, ostendat primò warantum de dote sua. Et si filium vel filiam nominaverit, suspendatur dotis petitio & filius vel filia petat totam hæreditatem, s. duas partes super filium alterius mulieris, et si ipse hæreditatem obtinuerit, per consequens ma-

f. 299.

Britton, v. ch. x. § 11.

5. Concerning two women contending for dower.

In the case of two women contending for their dower in respect of one man, the tenant shall answer to neither of them, until it has been discussed in the ecclesiastical court which of them ought to be called the legitimate wife, and which ought to prevail in a claim for dower, as will be stated below more fully at the end. When the tenant accordingly says that he ought not to answer to two women or more, we must see in the first place whether there is contention about the inheritance between two or more, who say that they are the legitimate heirs. When, therefore, there is a question at one and the same time about the succession and about dower, the action for the inheritance will always precede and ought to be determined first, lest if it should happen that the women are transmitted to the ecclesiastical court to prove which of them is the legitimate wife, and one of them proves herself in the ecclesiastical court to be the legitimate wife, and the heir of the other woman has proved himself in the secular court to be the legitimate heir, it might so happen that there was another warrantor of the other woman for her dower, which cannot be. Therefore when each of them says from the beginning that her son is her warrantor for her dower, in order to avoid that inconvenience, it is incumbent that it should first be settled who is the legitimate heir and of which woman he ought to be the warrantor for her dower, and thus the question of dower will be determined. But when one of the heirs shall be in possession of the inheritance, justly or unjustly, and his mother in the possession of the dower, and the woman who has nothing says that she is the legitimate wife and claims dower, let her first show a warrantor for her dower. And if she has named a son or a daughter, let the claim for dower be suspended, and let the son or daughter claim the entire inheritance, that is, two parts against the son of the other woman, and if he shall obtain the inheritance, his mother will obtain her dower as a consequence without

f. 299.

ter dotem obtinebit sine alia probatione. Et poterit quandóque utraq, nominare unum warantum, cùm una habuerit filium et alia nullum, ut si quis primô contraxerit cum aliqua consanguinea, vel alia affinitate conjuncta, secundum quod inferiùs dicetur, et inter eos celebrato divortio cõtraxerit cum alia, nihilominus de prima erit proles legitima, non obstante divortio. Et si prolem non habeat de secunda, vel si habuerit, semper erit warantus de dote secundæ uxori ille qui exivit de prima, cum sit hæres legitimus defuncto patri quoad successionem, propter ignorantiam utriusquè parentum vel alterius, & infra plus de hac materia. Et ubi sunt plures mulieres dotem petentes & plures hæredes de hæreditate contendentes, priûs terminari debet quis rectus hæres, ratione supradicta, & p consequens justus warantus de dote. Et sive sit justus hæres sive non, semper judicabitur ille p waranto, ad quem tertia pars reverti debet post mortem mulieris, sive sint hæredes apparentes sive non, ut si debeat hæreditas ad dominũ capitalem reverti sicut eschaeta. Fallit tamen, ut si à viro feoffatus fuerit quis qui terram amiserit, versus mulierem dotem petentem, & ubi excambium consequi non poterit versus hæredẽ, & ideo dos revertitur, quia ab eo proficiscitur, & sicut hæres legitimus dici poterit, quia ex justis nuptiis procreatus est, ita legitima uxor dici poterit, ubi intervenerit legitimum matrimonium, & sic in dote præferenda.

any other proof. And sometimes both women may name one and the same warrantor, when one has had a son and the other none, as if a person has first contracted matrimony with some kinswoman or another connected with him by affinity, according to what will be stated below, and a divorce between them having been pronounced, he shall have contracted matrimony with another, nevertheless the offspring by the first wife will be legitimate, notwithstanding the divorce. And if he have not offspring by the second woman, or if he have, he who was born of the first woman shall always be warrantor for the dower of the second wife, since he is the legitimate heir on the death of his father in what regards the succession, on account of the ignorance of both parents or of one of them, and there will be found more below on this matter. And where there are several women claiming dower and several heirs contending for the inheritance, it ought first of all to be determined who is the right heir, for the reason aforesaid, and consequently the rightful warrantor of dower. And whether he be the rightful heir or not, he will always be adjudged to be the warrantor, to whom the third part ought to revert after the death of the woman, whether there are heirs apparent or not, as if the inheritance ought to revert to the chief lord as an escheat. It fails, however, as if a person has been enfeoffed by the husband and has lost the land against a woman claiming dower, and where he cannot obtain compensation from the heir, and therefore the dower reverts, because it proceeds from him, and as an heir may be called legitimate because he is procreated from rightful nuptials, so a wife may be called legitimate, where legitimate matrimony has intervened, and so in dower is to be preferred.

f. 299 b.

Cap. VI.

1. Cum proposita fuerit intentie mulieris aut tenens statim restituat, vel excipiat et ostendat, quod dotem habere non debeat, vel warantum vocet.

Proposita intentione mulieris, & habito visu (ut prædictū est) tenens cùm comparuerit aut statim dotem restituat, vel excipiat, & ostēdat quòd mulier dotem habere non debeat, vel vocet warantum, si viderit expedire, & sic fiat irrotulatio. A. quæ fuit uxor B. petit versus C. tertiam partem tantæ terre cū ꝑtinentiis in tali villa, vel tantum terræ si dos fuerit nominata, ut dotem suam, unde prædictus B. qūōdā vir suus ea[1] inde dotavit vel nominatim dotavit &c., & tunc summoneas warantū ꝑ breve supradictum quòd sit ad certum diē, ad quē diem se poterit essoniare sicut in aliis placitis. Si autem non venerit nec se essoniaverit, testata summonitione, capiatur de terra ipsius warāti ad valentiā terræ petitæ in manum domini regis ꝑ tale breve.

2. Si warantus vocatus non venerit, cape per tale breve.

Britton, v. ch. v. § 1.

Rex vic. salutē. Cape in manum nostram ꝑ visum legalium hominum de com̃ tuo de terra tali ꝑ defectu talis ad valentiā tantæ terræ cum ꝑtinentiis in tali villa, quā A. quæ fuit uxor B. in curia nostra &c. clamat in dotē versus C. & unde idem C. in eadem curia &c. vocavit ipsum talem ad warantū versus prædictū C. & diem captionis &c. ut supra. Et summoneas &c. prædictum talem ꝗ sit ad talem diem &c. ut supra. Teste &c. Ad quem diē si nō venerit, mulier recuperabit seysinam suam, & tenens escambiū de terra waranti. Et licet venerit, si defaltam sanare non poterit, amittet eodē modo. Sed si cùm venerit statim warantizaverit, extunc ꝓcedat placitum inter ipsum

[1] "eam." M.S. Rawl. C. 160.

CHAPTER VI.

f. 299 b.

1. When the declaration of the woman has been propounded, let the tenant either at once restore or show that she ought not to have dower, or let him call a warrantor.

The declaration of the woman having been propounded and a view as aforesaid having been held, let the tenant, when he has appeared, either except and show that the woman ought not to have dower, or let him call a warrantor, if he sees it to be expedient, and so let the enrolment be. A. who was the wife of B. claims against C. the third part of so much land with its appurtenances in such a vill, or so much land, if the dower has been specified, as her dower, whereof the aforesaid B. formerly her husband endowed her, or endowed her specifically &c., and then summon the warrantor by the writ above mentioned that he be present on a certain day, upon which day he may essoin himself as in other pleas. But if he shall not have come nor essoined himself, the summons having been attested, let there be taken of the land of the said warrantor into the hand of the king up to the value of the land claimed by a writ of this kind.

2. If the warrantor having been called shall not have come, the *cape* by a writ of this kind.

The king to the viscount greeting. Seize into our hand by the view of loyal men of your county of such a land, for the default of so-and-so, as much as the value of so much land with its appurtenances in such a vill, which A. who was the wife of B. claims in our court for her dower against C., and whereof the said C. in the same court &c. has called the said so-and-so as his warrantor against the aforesaid C., and the day of seizure &c. as above. And summon &c. the aforesaid so-and-so, that he be present on such a day &c. as above. Witness &c. At which day if he shall not have come, the woman shall recover her seysine and the tenant his compensation from the land of the warrantor. And although he should come, if he cannot cure his default, he shall lose in the same manner. But if when he has come he has forthwith warranted, thenceforth let the suit proceed between the said warrantor and the woman the claimant,

warantum & mulierem petentē, & tenens domi remaneat cū seysina sua, donec constiterit de placito principali, & secundū hoc retinebit tenens vel amittet.

3. Quod uxor recuperabit super tenentem vel super hæredem, secundum quod fuerit dotata nominatim, vel non nominatim.

Et si justam causam resistendi non habuerit, tunc necesse habebit recognoscere terram petitam esse dotem mulieris, & si mulier inde nominatim dotata fuerit, tenebitur ille qui amisit dotē illam deliberare de manu tenentis de cujuscūq; feodo fuerit, & tenens escambiū ad valentiam habebit. Si autē non fuerit nominata tūc teneat tenens in pace, & mulier de terra waranti habebit ad valentiam, sive sit hæres sive alius, & si contentio fiat utrum dos nominata fuerit vel non nominata, fiat inde inquisitio: & secundū inquisitionem inde factā judicet.

4. Quod non remanet actio mulieri, cum recuperaverit dotem. Britton, v. ch. v. § 2.

Et sciendū q rarò expectatur ætas in petitione dotis. Et unde, si hæres infra ætatē existens vocatus fuerit ad warantū, & p chartarū ostensionē vel alio modo constare possit q ille, contra quē dos petitur, feoffatus fuerit ab antecessorib9 ipsius minoris, sive mulier dotata fuerit nominatim vel non nominatim, statim pcedet judiciū, non obstante ætate, sicut pcederet versus majorē quēcunq;. Et cùm mulier sic recuperaverit, fiat ei breve de seysina habenda in hac forma de dote nominanda.

5. Breve de seysina facienda mulieri, cum recuperaverit dotem.

H. Dei gratia &c. Scias q, cùm A. quæ fuit uxor B. in curia nostra &c. peteret versus C. tantū terrę cum pertinētiis in tali villa, ut dotē suā nominatā: idē C. venit in eadē curia, & vocavit inde ad warantū

and let the tenant remain at home with his seysine, until the principal suit has been settled, and according to that [settlement] the tenant shall retain or shall lose.

3. That the wife shall recover against the tenant or the heir, according as she has been endowed specifically or not specifically.

And if he have not a just cause of resisting, then he will be under the necessity of acknowledging that the land claimed is the dower of the woman, and if the woman has been endowed specifically therewith, he who has lost will be bound to deliver that dower from the hand of the tenant of whosesoever feud it may be, and the tenant will have compensation for the value. But if it has not been specifically named, then let the tenant hold in peace, and the woman shall have of the land of the warrantor the value [of her dower], whether he be the heir or another person; and if there be a contention whether the dower has been specifically named or not, let there be an inquest thereon, and let judgment be given according to the inquest thereon held.

4. That the action of the woman for her dower is not stayed on account of the minority of the warrantor.

And it is to be known that age is seldom waited for in a petition for dower. And hence if the heir being of age has been called to warrant, and it can be established either by the exhibition of charters or in any other manner, that he against whom dower is claimed, has been enfeoffed by the ancestors of the said minor, whether the woman has been specifically endowed or not, the judgment shall forthwith proceed, notwithstanding the minority, as it would proceed against any one of majority, and when the woman has recovered, let a writ be granted to her for having seysine in this form concerning the specified dower.

5. A writ for givin seysine to a woman when she has recovered dower.

Henry by the grace of God, &c. Know that when A. who was the wife of B. claimed in our court, &c., against C. so much land with its appurtenances in such a vill, as her specified dower: the said C. came into the same court and called to warrant thereon D. the son

D. filiū & hæredē prędicti B. viri ipsiꝰ A. qui est infra ætatē, et qui venit et warātizavit, et nihil ostēdit quare dotē suā habere nō debuit. Et unde cōsideratū est in eadē curia nostra, q̧ prædicta A. recuperaret seysinā suā versus eundē B. de prędicta terra cū ꝑtinentiis, ut de dote sua nominata, et q̧ prędicta[1] C. habeat de terra ipsius D. ad valentiā. Et ideò tibi præcipimꝰ, q̧ eidē A. de ꝑ̃dicta terra cū ꝑtinentiis sine dilatione plenariā seysinā habere facias et eidē C. de terra ipsius D. excambiū ad valentiam ꝑ visum legalium hominū & per rationabilem extēsionem sine dilatione assignari facias. Si autem hæres non fuerit infra ætatē sed plenæ ætatis, tunc variatur breve in parte ista, s. Scias quòd cùm A. quæ fuit uxor B. in curia nostra &c. peteret in dotem versus C. tantam terram cum pertinentiis in tali villa, & unde prædictus B. eam nominatim dotavit. Idem C. venit in eadem curia nostra, & vocavit inde ad warantū D. filium, vel fratrem, vel alium hæredem prædicti B. ꝑ quem ipse[2] clamat dotem suam, vel sic: D. filium et hæredem, vel fratrem, vel alium hæredem ipsius B. ad warantum ipsius A. de dote sua, qui venit in eadem curia, et eidem C. terram illam warantizavit, & nihil ostendit, quare prędicta A. terram illam non haberet ut dotem suam nominatam, et unde consideratum est in eadem curia nostra &c. Per omnia ut supra. Et ita in primo casu remanebit quilibet eorum taliter in seysina, quousq; idem minor ad ætatem ꝑvenerit, & ipse tunc deliberet, si possit, ipsi tenenti terram suam quam mulier recuperavit, et si illam deliberavit, rehabeat terram suam, quam dedit in excambium: sin autem, remaneat quilibet eorum in tali seysina tota vita

f. 300.

[1] "prædictus," MS. Rawl. C. 160. | [2] "ipsa," MS. Rawl. C. 160.

and heir of the aforesaid B. the husband of the said A. who is under age and who came and warranted, and showed no reason why she ought not to have her dower. And whereupon it was considered in the same our court that the aforesaid A. should recover her seysine against the said B. of the aforesaid land with its appurtenances, as for her specified dower, and that the aforesaid C. should have of the land of the said D. up to the value. And accordingly we enjoin you that you cause plenary seysine to be made without delay of the aforesaid land to the said A. with its appurtenances, and that you cause compensation for its value to be assigned to the said C. from the land of the said D. without delay by the view of loyal men and by a reasonable extent. But if the heir be not under age but of full age, then let the writ be varied in this part, to wit: Know that when A. who was the wife of B. claimed in our court, &c., for her dower against C. so much land with its appurtenances in such a vill, and wherewith the aforesaid B. endowed her specifically, the said C. came into our said court, and called to warrant thereon D. the son or the brother or other heir of the aforesaid B. through whom she claims her dower, or thus: D. the son and heir, or the brother, or other heir of the said B. to warrant the said A. for her dower, who came into the same court, and warranted to the said C. that land, and showed no cause why the aforesaid A. should not have that land as her specified dower, and whence it was resolved in our said court, &c. Throughout as aforesaid: and thus in the first case each of them shall remain in such manner in seysine until the same minor has come of age, and let him then deliver, if he can, to the said tenant his own land which the woman has recovered, and if he has delivered that, let him have back again his own land which he has given in compensation, but if otherwise, let each of them remain in such seysine during the entire life of the said woman. But if the

f. 300.

ipsius mulieris. Si vero de tertia parte (dote nō nominata) seysinā recuperaverit mulier versus minorem cùm vocatus fuerit ad warantum, tenens tenebit in pace terram petitam, et mulier habebit ad valentiam de terra minoris per tale breve.

6.
Breve, si de tertia parte dotis non nominatæ recuperaverit, et inde feoffatus tenens in pace et hæres faciat dotem mulieri petenti.

Rex vicecoṁ salutem. Scias quòd cùm A. quæ fuit uxor B. in curia nostra &c. peteret versus C. tertiam partē tantæ terræ cum pertinentiis in tali villa ut dotem suam, idē C. venit in eadem curia nostra coram &c. et vocavit inde ad warantum D. filium et hæredem prædicti B. quondam viri ipsius A. qui est infra ætatem, et qui venit et ei warantizavit, et qui nihil ostendit quare dotem suam inde habere non debuit. Et unde consideratum est in eadē curia nostra coram &c. quòd prædictus C. terram petitam teneat in pace, et q prædicta A. habeat de terra ipsius D. (nomine dotis) ad valentiā prędictæ tertiæ partis. Et ideo tibi præcipimus quòd (facta prius extensione de prædicta tertia parte) eidem A. de terra ipsius B. in loco cōpetenti, ad valentiam prædictæ tertiæ partis, per visum legalium hominum (et secundum q prædictū est) sine dilatione habere facias et assignari. Teste &c. Et eodē modo variať bře, cùm hæres fuerit plenæ ætatis, quo variať supra de dote nominata. Et additur quandoq; huic brevi clausula ista. Et unde consideratū est in eadē curia nostra, quòd prædicta A. habeat de terra ipsi⁹ B. ad valentiam prędictæ tertiæ partis, si terra ipsius D. sufficiat ad valentiā prædictæ tertiæ partis. Sin autem, hoc q defecerit habeat de terra ipsius C. secundum quantitatem quæ ei defuerit, usq; ad quantitatē illius tertiæ partis quam prædicta A.

woman has recovered seysine of the third part (her dower not having been specified) against the minor, when he has been called to warrant, the tenant shall hold in peace the land claimed, and the woman shall have up to the value from the land of the minor by a writ of this kind.

6. A writ, if the woman has recovered the third part, where her dower has not been specified, and the feoffee thereof may hold it in peace, and the heir must provide a dower for the woman claimant.

The king to the viscount greeting. Know that when A. who was the wife of B. claimed in our court &c. against C. the third part of so much land with its appurtenances in such a vill as her dower, the said C. came into our said court before &c., and called thereon to warrant D. the son and heir of the aforesaid B. formerly the husband of the said A., who is under age and who came and warranted it to her, and who showed no reason why she ought not to have her dower therefrom. And whereupon it was resolved in our said court before &c. that the aforesaid C. should hold that land in peace, and that the aforesaid A. should have from the land of the said B., in the name of dower, an equivalent for the said third part. And accordingly we enjoin you that (after an extent has been first made of the aforesaid third part) you cause without delay an equivalent for the said third part to be had and assigned by the view of legal men, and according to what has been said above, to the said A. from the land of the said B. in a suitable place. Witness &c. And in the same manner the writ is varied, when the heir has been of full age, as it is varied above concerning a specified dower. And there is sometimes added to the writ this clause: And whereupon it was resolved in our said court that the aforesaid A. have of the land of the said B. an equivalent for the aforesaid third part, if the land of the said B. suffices for the value of the aforesaid third part. But if otherwise, let her have that which has been wanting from the land of the said C. according to the quantity which has been wanting up to the quantity of the said third part, which the aforesaid A. claims as her dower against the

clamat in dotem versus prædictū C. Et ideo præcipimus tibi, quôd prius facta extēsione eidem A. &c. ut supra ad valentiā tertie partis, & eodem modo (quo prędictū est) de terra ipsius D. &c. Et notandū quòd, quamvis ipse tenens principalis fuit infra ætatē, non remanebit ꝑpter hoc exactio dotis (ut prædictum est), sive dos nominata fuerit sive non nominata, et sic remanebit quilibet in seysina (secundum quod prædictum est) usquè ad ætatem waranti minoris. Et cûm ad ætatem pervenerit, tunc deliberet terram, quam warantizavit, si possit, & rehabeat excambium suum, vel aliter breve de seysina de eodem.

f. 300 b.

7. Breve, ubi mulier recuperaverit dotem suam ut de dote nominata super hæredem, quod ipsa recuperat, et hæres faciat excambium feoffato ad valentiam.

Rex vicecom̃ salutem. Scias quòd cùm A. quæ fuit uxor B. in curia peteret versus C. tantū terræ cum pertinentiis in tali villa ut dotem suam unde fuit nominatim dotata, idem C. venit in eadem curia & vocavit inde ad warantum D. filium et hæredē prædicti B. per chartam ipsius B. patris sui quam protulit. Qui quidem B. cùm præsens esset & infra ætatem constitutus, consideratum fuit quòd eadem A. recuperaret seysinam suam de prædicta terra cum pertinentiis versus prædictū D. ut de dote sua nominata. Et quòd idem C. habeat de terra, quę fuit ejusdem B. (quæ est in custodia ipsius A. in tali villa) excambium ad valentiā prædictæ terræ cum ꝑtinentiis usqꝫ ad legitimam ætatem D., et idem D. tūc deliberet prædictā terrā eidem C. in prædicta tali villa, & recipiat prędictū excambium si possit. Sin autem, prędicta A. teneat prædictam terram tota vita sua. Et ideò tibi pręcipimus ꝗ assumptis tecū xii. &c. in ꝓpria ꝑsona tua &c. et ꝑ eorum sacramentum &c. et per visum

aforesaid C. And accordingly we enjoin you that after an extent has been first made [you cause to be assigned] to the said A. &c. as above to the value of the third part, and in the same manner as aforesaid concerning the land of the said D. &c. And it is to be noted that although the principal tenant has been under age, the exaction of the dower shall not be stayed (as said above), whether the dower be specified or not specified, and so each shall remain in seysine according to what has been said above, up to the majority of the minor who is warrantor. And when he shall have come of age, then let him deliver the land which he has warranted, if he can, and let him have back again his exchange; or otherwise a writ of seysine for the same.

f. 300 b.

7. A writ where a woman has recovered her dower as for specified dower against an heir, that she recover and the heir make compensation to the feoffee up to the value.

The king to the viscount greeting. Know that when A. who was the wife of B. claimed in court against C. so much land with its appurtenances in such a vill as her dower, with which she was specifically endowed, the said C. came into the same court and called to warrant thereon D. the son and heir of the aforesaid B. by the charter of the said B. his father, which he produced. Which B. indeed, when he was present and was under age, it was resolved that the said A. should recover his seysine of the said land with its appurtenances against the aforesaid B. as for her specified dower. And that the said C. should have of the land which belonged to the said B. (which is in the custody of the said A. in such a vill) an equivalent in exchange for the said land with its appurtenances up to the legal majority of the said D., and that the said D. should then deliver the said land to the aforesaid C. in the aforesaid vill and receive the aforesaid compensation, if possible. But otherwise let the aforesaid A. hold the aforesaid land during all life. And accordingly we enjoin you that having taken with you twelve persons &c. in your own proper person &c. and by their oath &c. and by their view you cause to be assigned to the said C. (according to what has been

eorūdem de terra ipsius D. in N. quæ est in custodia ipsius A. excambium ad valentiam prædictæ terræ eidem C. (secundum quod prædictum est) facias assignari, salvo eidem A. blado suo de hoc instanti autumpno de prędicto escambio, similiter et fæno, si falcatum fuerit ante susceptionem literarum istarum, et à solo separatū, alioquin remaneat ipsi C. Teste &c. Et notādum quòd quicunq; fuerit ad warantū vocatus, cùm warantizaverit, nihil habeat unde faciat excambium, sive in dote nominata sive non nominata, ꝑpter hoc non amittet mulier dotem suam, sed post mortem mulieris revertatur dos ad tenentes, nisi priûs fuerit eis satisfactum de escābio per hæredē. Notandū etiam quòd ubicūquè petitur dos versus minorē mediatè vel immediatè, semper summonend[9] est custos q sit et habeat hæredē per tale breve. Sed quid, si custos alienaverit, ita q non sit in seysina et custodia de terra minoris die quo summonitus fuerit, sed ille cui custodiam dimiserit? hoc non nocebit ei, quia minorē vocavit ad warantū, quia cum custode nullam habet actionem, sed cum hærede, quicunq; illum tenuerit, et custos semper illum habeat, et hæc vera sunt, sive unus hæres sive plures, vel unus ex pluribus hæredibus fuerit infra ætatem. Forma brevis de summonitione. Rex vicecom̄ salutem.

8. Ratio, quare mulier recuperat dotem nominatam, si alienata fuerit, et de dote non nomi-

Expectatur quandóque ætas minoris in dotis petitione in casu speciali, ut supra de exceptionibus. Item ratio quarè mulier dotem nominatam recuperat, ad quemcunq; ꝑvenerit, talis esse poterit, s. quod ex quo dos certa cōstituta fuerit, mulier statim incipit habere jus et dominiū, & ideò, ad quemcunque pervenerit, recuperabit: vir enim dotem dat & constituit, hæres au-

said above) from the land of the said D. in N. which is in the custody of the said A. an equivalent portion of the said land in exchange, saving to the said A. his grain-crop of this coming autumn from the said land assigned in exchange, and in like manner the hay-crop, if it has been mown and separated from the soil before the receipt of these letters, otherwise let it remain for the said C. Witness, &c. And it is to be noted that if, whosoever shall have been called to warrant, he has nothing when he has warranted wherewith to make compensation, whether in the case of dower specified or in the case of dower not specified, the woman shall not on that account lose her dower, but after the death of the woman let the dower revert to the tenants, unless they have been first satisfied with a compensation by the heir. It is also to be noted wherever dower is claimed against an heir either mediately or immediately, the guardian is always to be summoned to be present and to produce the heir by a writ of this kind. But what if the guardian has alienated the land, so that he is not in the seysine and custody of the land of the minor on the day on which he has been summoned, but he is so, to whom he has demised the custody? this will not hurt the claimant, that he has called the minor to warrant, because he has no action against the guardian, but against the heir whoever may keep him, and the guardian must always produce him, and these things are true, whether there be one or more heirs or one of several heirs be under age. The form of the writ of summons. The king to the viscount greeting.

8. The reason why a woman recovers her specified dower, if it has been alienated, and of dower not specified only

The majority of a minor is sometimes waited for in a petition for dower on special grounds, as above on the subject of exceptlons. Likewise the reason why a woman recovers her specified dower, to whomsoever it may have come, may be of this kind, to wit, that from the time a certain dower was appointed the woman immediately commenced to have a right and ownership, and accordingly shall recover, to whomsoever it may

nata nisi excambium. Item expectatur quandoque ætas in petitione dotis speciali ratione.

tem tantum dotem assignat. Sed si dos in tertia parte fuerit constituta, non statim incipit mulier jus habere propter incertitudinem, quia nescit quam tertiam partem habere debeat, donec fuerit ei assignata, et non nisi illam, quæ ei per sortem acciderit. Et ideò non statim incipit habere jus in ipsa dotis constitutione de tertia parte, sicut in dote nominata. Et ideò in uno casu recuperabit mulier terram petitā, & in alio casu non nisi escambium. Si verò mulier dotem recuperaverit versus aliquem warantiū qui warantizavit, & warātus nihil habeat in comitatu unde warantizare possit, sed in alio comitatu, tunc fiat extēsio terræ q̃m amisit, secundū quod superius dictum est. Si autem manens sit infra aliquam libertatem, & tenens qui amisit queratur quòd escambium non habuerit, tunc fiat tale breve episcopo vel comiti, cujus libertas illa fuerit.

f. 301.

9\. Cum autem mulier recuperat seysinam suam sive de dote nominata sive non nominata, et versus eum qui warantizat, et warantus non habeat terram in comitatu illo, in quo petitur, unde possit warantizare, sed

Rex tali episcopo salutē. Sciatis quòd cûm A. quæ fuit uxor B. in curia nostra &c. (ut supra) & unde prædictus C. queritur quòd idem D. nullum adhuc escambiū ei inde fecit. Et quia prædictus D. nullum tenementum habet extra libertatem nostrā[1] (ut audivimus) vobis mandamus quòd distringatis prædictum D. quòd sit corā justitiariis &c. ad faciendum eidem C. escambiū ad valētiam prædictæ tertiæ partis vel ad ostendendū quare escambiū facere non debeat. Teste &c. Item cùm mulier dotem recuperaverit nominatā in aliquo certo manerio per constitutionē dotis sub tali conditione, ut si sufficiat pro tertia parte quòd mulieri remaneat integrè, & si manus ibi fuerit: quòd defectus ei perficiatur alibi in loco competenti, & si plus ibi fuerit, quòd surplusagium reddatur hæredi:

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[1] "vestram," MS. Rawl. C. 160.

have come: for the husband gives and appoints the dower, the heir indeed only assigns the dower. But if the dower has been appointed of a third part, the woman does not immediately commence to have a right on account of the uncertainty, for she does not know what third part she ought to have, until it has been assigned to her, and only that which shall have fallen to her by lot. And accordingly she does not commence to have a right in the said appointment of dower of a third part, as in the case of dower specified. And accordingly in the one case the woman shall recover the land claimed by her, and in the other case only an equivalent. But if the woman has recovered her dower against any warrantor who has warranted it, and the warrantor has nothing in the county wherewith he can warrant, but in another county, then let there be an extent made of the land which he has lost, according to what has been said above. But if he be commorant within a certain franchise, and the tenant who has lost complains that he has not obtained an equivalent, then let such a writ be addressed to the bishop or the earl, whose franchise it may be.

an equivalent. Likewise majority is sometimes waited for in a petition for dower for a special reason.

f. 301.

The king to such a bishop greeting. Know ye, that when A. who was the wife of B. in our court &c. as above and whereof the said C. complains that the said D. has made her as yet no equivalent for it. And because the aforesaid D. has no tenement within our franchise (as we have heard), we command you that you distrain the aforesaid D. that he be present before the justiciaries &c. to make compensation to the said C. to the value of the aforesaid third part, or to show cause why he ought not to make compensation. Witness, &c. Likewise when a woman has recovered her specified dower in some certain manor by the appointment of the dower under such a condition, that if it be sufficient for the third part it should remain entirely with the woman, and if it be too little, that the defect be made up to her from elsewhere in a suitable place, and if it be too much, that the surplusage be restored to the heir: according to what may

9. But when the woman recovers her seysine either of dower specified or dower not specified and against him who warrants it, and the warrantor has no land in the county, in which the claim is made, wherewith he can warrant, but in

in alio comitatu, ubi terram habuerit, fiat tale breve.

secundûm quod inveniri poterit de termino Sanctæ Trinitatis anno regni regis Henrici decimoquarto in comitatu Norff., de Letitia de Eggefend, tunc (facta prius extensione manerii de valore) fiat mulieri seysina per tale breve.

10. Breve, ubi mulier recuperat seysinam suam de dote nominata.

Rex vicecoṁ salutem. Scias quòd A. quæ fuit uxor B. in curia nostra &c. per cōsiderationem ejusdē curiæ nostræ recuperavit seysinam suam versus C. de toto manerio tali cum pertinentiis ut de dote sua, unde fuit dotata nominatim, ita tamen quòd si maneriū illud sufficiat ad tertiā partem omniū terrarū & tenementorū, quæ prædictus B. quondam vir ipsius A. habuit die quo eandē A. desponsavit, tunc maneriū illud integrè remaneat ipsi A. in dotem (secundûm quod prædictū est), si autē maneriū illud excedat valorem tertię partis omniū prędictarū terrarū & tenementorū, tunc illud superplusagiū quod excedit reddatur eidem C.; & si minus tertia parte ibi fuerit, illud quod defuerit ꝑficiatur eidem A. alibi loco competenti de terris & teñtis prædicti C. Et ideo tibi præcipimus q eidem A. de prædicto manerio (secundùm quod prædictū est) cum ꝑtinentiis sine dilatione plenariam seysinam habere facias, & ꝑ sacramentū liberorū & legaliū hominum de coṁ tuo extendi facias & appreciari omnes terras, & omnia tenementa quæ fuerunt ꝑ̃dicti D. in coṁ tuo, die quo eandem A. desponsavit, in dominicis, villenagii, & servitiis liberorū hominum, & in omnibus aliis rebus quicunq, illa teneat. Et si ꝑ prædictam extensionem & appreciationem inveneris, quod prædictum manerium plus valeat q̃m tertia pars omniū prædictarū terrarū & teñtorū, tunc superplusagiū, quod excedit valorē illius tertiæ partis, habere facias & assignari

be found in Holy Trinity term in the fourteenth year of the reign of king Henry in the county of Norfolk, in the case of Letitia de Eggefend; then after an extent has been made of the manor as to its value) let seysine be given to the woman by a writ of this kind.

another county where he has land, let a writ of this kind issue.

10. A writ where a woman recovers her seysine of specified dower.

The king to the viscount greeting. Know that A. who was the wife of B. in our court, &c., by the resolution of our said court has recovered her seysine against C. of the whole of such manor with its appurtenances as for her dower, whereof she was endowed specifically, on such terms that, if that manor suffices for the third part of all the lands and tenements, which the aforesaid B. formerly the husband of the said A. had on the day when he espoused the said A., then that manor should remain entirely with the said A. for her dower (according to what has been said above), but if that manor should exceed the value of a third part of all the lands and tenements aforesaid, then let that surplusage which exceeds be restored to the said C.; and if there be less than a third part, let that which is wanting be supplied to the said A. in some other suitable place from the lands and tenements of the aforesaid C. And accordingly we enjoin you that you cause plenary seysine to be made of the said manor according to what has been said above with its appurtenances without delay to the said A., and that you cause to be extended and appraised by the oath of free and loyal men of your county all the lands and all the tenements which belonged to the said D. in your county on the day on which he espoused the said A., in domains, in villenages, and in services of free men, and in all other things whoever may hold them. And if through the aforesaid extent and appraisement you shall have found that the aforesaid manor is worth more than the third part of all the aforesaid lands and tenements, then that you should cause the surplusage, which exceeds the value of that third part, to be had and assigned to

prædicto C., salvo tamē eidem A. mesuagio capitali illius manerii.

11. De modo assignandi dotem.

Et si minus ibi fuerit quam prædicta tertia pars (secundûm rationabilem extensionē), tunc quod defuit habere facias eidem A. de hæreditate ipsius C. alibi in loco competenti. Si autem nec plus nec minus, tunc de prædicto manerio cum pertinentiis se teneat contentam. T. &c.

12. f. 301 b. Quod finis factus in curia domini regis non aufert dotem nominatam.

Quæritur inter alia, an finis factus in cur̃ regis auferre possit dotem nominatam? ut si vir vel alius de dote nominata fecerit alienationem quocunq; modo, & finis et cyrographum in curia domini regis intervenerit: et verum est quòd non, ut probatur de termino Sanctæ Trinitatis anno regni regis H. tertio in comitatu Buck., de Alicia quæ fuit uxor Symon de Stentenham, & quendam hæredem[1] qui dotem incumbraverit (qui etiam deliberare debuit eam si posset) et feoffato per finem illum fecit escambium ad valentiam, et mulier teneat tota vita terram illam, et post mortem suam revertatur ad feoffatum et non ad hæredem, nisi tantum excambium.

Cap. VII.

1. Exceptiones contra mulierem petentem dotem.

Si contra mulierem petentem dotem tenens warrantum vocare noluerit, cùm extraneus tenens vel hæres ipse in possessione extiterit, excipere poterit multis modis contra mulierem quare dotem habere non debeat perēptoriè, vel quare ad tēpus differri debet actio et dotis exactio dilatoriè. Dicit enim mulier in intēsione sua et fundatione intēsionis, quo jure ptineat ad

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[1] "et hæres, qui dotem incum- "bravit, ut prius deliberet eam si "posset, et feoffato," MS. Rawl. C. 159.

the aforesaid C., saving always to the said A. the chief messuage of that manor.

11. Of the mode of assigning dower.

And if there has been there less than the aforesaid third part (according to a reasonable extent), then cause what is deficient to be assigned to the said A. from the inheritance of the said C. in some other suitable place. But if neither more nor less, then let her be content with the aforesaid manor and its appurtenances. Witness, &c.

12. f. 301 b. That a fine made in the court of the lord the king does not take away a specified dower.

It is asked amongst other things, whether a fine made in the court of the king can take away a specified dower? As if a husband or other person has made an alienation of a specified dower in any manner whatsoever, and a fine and a chirograph has intervened in the court of the lord the king: and it is true that it is not so, as is proved in Holy Trinity Term in the third year of the reign of king Henry, in the county of Bucks, concerning Alice who was the wife of Simon of Stentenham against a certain heir, who encumbered the dower, (who ought to have delivered it, if he could,) and made by that fine to the feoffee an equivalent in exchange, and the woman should keep during the whole of her life that land, and after her death it should return to the feoffee and not to the heir, except only the equivalent in exchange.

Chapter VII.

1. Exceptions against a woman claiming dower.

If the tenant has been unwilling to call a warrantor against a woman claiming dower, when a stranger tenant or the heir himself is in possession, he may except in many ways against the woman why she should not have her dower peremptorily, or why the action for dower should be deferred for a time, and the exaction of dower should be delayed. For the woman states in her declaration and in the foundation of her declaration, by

ipsum actio dotis. Dicitur enim sic: Talis mulier N. unde inprimis erit videndum, quòd non sit error in nomine &c. ut supra. Quia pro cognomine satis sufficit quod dicitur, Talis quæ fuit uxor talis &c. De hoc autē quod dicitur (fuit) excipi poterit q fuit uxor et est uxor talis, et quòd dotem petere non poterit, quia vir suus adhuc vivit, quo casu, si hoc dedici non possit, cadit mulier a casu: quia constitutio dotis et donatio ꝑpter nuptias morte viri confirmatur. Est enim mors civilis et mors naturalis. Si autem dicatur q civiliter mortuus sit, eo quòd contulit se religioni, ex adverso responderi poterit, quòd vir redire poterit ad seculum, quiâ non assumpsit nisi habitum probationis. Si autem ex parte mulieris dicatur quòd vir assumpsit habitum professionis, suspenditur actio dotis quousq; p ordinariū loci, vz. episcopū, abbatē, vel alium de veritate constiterit. Si autem dicatur à muliere q morte naturali, et ex adverso dicatur quòd vivus sit, videndū cui incumbat ꝑbatio. Et sciendū est quòd quandóq; mulieri, quæ dicit quòd mortuus sit, quia qui dicit ꝑbare debet, & quandóq; tenenti qui excipit quòd vivus est, quia excipiendo est quasi actor, et probare debet exceptionem suam sicut mulier actionem suam. Et quòd quandóque mulieri quæ dicit inducta est probatio de morte viri, habetis de termino Sancti Michaelis an̄ regni regis H. nono incipiente decimo in comitatu Essex, de Asselina quę fuit uxor Alani filii Jul. Et ubi datus fuit dies mulieri ad ꝑbandū, & tenens qui

Britton, v. ch. vi. § 1.

what right the action for dower appertains to her. For it is stated thus: Such a woman N., wherefore it is to be seen in the first place, that there is no error in the name, &c. as above, because as regards her surname it is sufficient that it is stated, such an one who was the wife of so-and-so, &c. But as regards the word "was" it may be excepted that she was the wife and is the wife, and that she cannot claim dower because her husband is still alive, in which case if it cannot be denied, the woman falls from her suit, because an appointment of dower and a donation on account of marriage is confirmed by the death of the husband. For there is a civil death and a natural death. If indeed it be said, that he is civilly dead, inasmuch as he has entered a religious order, it may be answered on the opposite side that a man may return to secular life, because he has only assumed the dress of a probationer. But if on the part of a woman it be said that her husband has assumed the dress of a probationer, the action for dower is suspended until through the ordinary of the place, to wit, the bishop, abbot, or other person, the truth be established. But if it be stated by the woman that her husband has died by a natural death, and it be said on the opposite side that he is alive, we must see upon whom the proof falls. And it is to be known that it falls sometimes on the woman, who says that he is dead, because he who says a thing ought to prove it, and sometimes in the tenant who excepts that he is alive, because by excepting he is as it were the party proceeding, and he ought to prove his exception, just as the woman her action. And that sometimes the proof of the death of her husband is imposed on the woman who asserts it, you have in the term of St. Michael in the ninth and tenth years of the reign of king Henry, in the county of Essex, concerning Asselina who was the wife of Alan the son of Julius. And where a day was allowed to the woman to prove, and the tenant who excepted on the

excipit de vita non fuit oneratus ꝑbatione. Quandóq; vero inducitur ꝑbatio utriq;, tam mulieri petenti quâm tenenti, & dabitur utriq; dies quòd mulier ꝑbet mortem & tenens vitam. Et si mulier petens ad diem sibi datū sectam sufficientem ꝑduxit, quòd vir suus mortuus sit, s. qui interfuerit ubi mortuus fuerit apud talem locū & sepultus est apud talem ecclesiam. Et secta examinata, si in omnibus bene conveniat, tūc primò respondeat tenens mulieri petenti de dote sua, nisi ita sit quòd tenens ꝑ se sectam ꝑducat validiorem quòd vivus, & quo casu præferēda est illa ꝑbatio, que fuerit magis valida. Et si ꝑbatio mulieris magis valida, tunc primò respondeat tenens actioni mulieris. Sed quare non statim recuperat? videtur quòd ideo, quia bene potest esse quòd vir suus mortuus sit, et quod ipsa nihil juris habeat in petitione sua, & ideo tunc necesse habet docere de jure suo. Et quôd ita sit, habetis in secundo rotulo post guerrā de termino Sanctæ Trinitatis in comitatu Sussex, de Maria de Cromesham. Sed quid si ad diem eis datum unus habuerit ꝑbationem sufficientem & alius nullam, pro eo judicabitur, qui ꝑbationem habuerit. Si autem ex neutra parte nisi tātum præsumptio ex semiplena ꝑbatione, tunc recuperabit mulier dotem petitam nisi alia obstiterit exceptio. Sed tamen sub tali conditione, quòd si vir redierit, restituat dotem tenenti sine placito cum fructibus medio tempore perceptis, præstita sufficienti securitate fide jussoria, alioquin remaneat tenens in seysina sua. Et quòd ita sit, videri poterit de termino Sancti Hillarii añ regni regis decimoquinto in coñ Derbi, de Agnete quæ fuit uxor

f. 302.

Britton, *ib.* § 4.

ground of the life of the husband was not burdened with the proof. Sometimes the proof is imposed on both, the woman claimant and the tenant, and a day will be allowed to each, that the woman may prove the death of her husband and the tenant his life. And if the woman claimant on the day assigned to her has produced a sufficient sect to affirm that her husband is dead, to wit, who were present when he died at such a place and was buried at such a church. And if the sect upon examination agree in all particulars, then in the first place let the tenant answer to the woman claiming her dower, unless it be that the tenant produces his sect which is stronger to show that the husband is alive, and in which case the proof which is the stronger is to be preferred. And if the proof on the part of the woman is the stronger, then in the first place let the tenant answer to the action of the woman. But why does she not at once recover? It seems for this reason, that it may well be that her husband is dead, and that she has no right in her claim, and accordingly it is necessary for her to prove her right. And that this is so you have in the second roll after the war, in the term of Holy Trinity, in the county of Sussex, concerning Maria de Cromesham. But what if on the appointed day the one has a sufficient proof and the other none at all? It shall be adjudged for him who has furnished the proof. But if on neither side there is anything else except a presumption arising from a half complete proof, then the woman shall recover the dower claimed by her, unless some other exception should be an obstacle. But nevertheless under this condition, that if the husband should return, she shall restore to the tenant without a suit her dower with the fruits derived from it in the meantime, having furnished sufficient responsible sureties, otherwise the tenant shall remain in the seysine. And that this is so may be seen in St. Hilary Term in the fifteenth year of the reign of the king in the county of Derby, in the case of Agnes

f. 302.

Nicholai. Et q in hac exceptione dari debeat dies rationabilis ad sectam producēdam, si partes primo die sectam non habuerint, ꝓbatur de termino P. anñ regis H. xv. in coñ Surrey de Ioetta de la Strode.

Cap. VIII.

1. Exceptio, quod nunquam fuit desponsata tali viro.

Item dicitur: Talis quæ fuit uxor talis, ad quod poterit tenens excipere q nunquam fuit uxor ejus, quia nunquā fuit ei despōsata, nec rem habuit cum illa. Item si rem habuit cum illa, non tenuit illam, nisi ut concubinam suam. Item si desponsata, non legitimo matrimonio, quia priùs aliam duxerat de jure & istam de facto, vel si nullam priùs habuerit de jure, tamen ista petere dotem non potest, quia celebratum fuit divortiū inter eos propter consanguinitatem, compaternitatem, vel aliam affinitatem.

Britton, v. ch. vii. § 1.

2. De exceptione contra matrimonium.

Item si matrimonium legitimū, mulier tamen tunc tēporis ita tenella fuit, quòd virū sustinere nō posset, ita quòd posset dotē deservire. Itē si aliquādo fuit ibi matrimoniū, tamen desiit esse ꝑpter divortiū, et ubi ab initio nullū erat matrimoniū, nulla est dos, et ubi ab initio est matrimoniū, ibi erit dos, quādiu steterit matrimoniū, sed facto divortio quacunq; occasione, desinit dos & dotis petitio. Itē si matrimoniū legitimū quantum ad hæredē & hæreditatis successionem, tamen illegitimū erit quoad dotis exactionem, cùm dos constituta fuerit alibi quàm ad ostiū ecclesiæ, ꝑpter verba in intentione mulieris contenta, & unde dotata fuit od ostiū ecclesiæ. Cùm autē talis proponatur ex-

who was the wife of Nicholas. And that in an exception of this kind a reasonable day should be allowed to produce a sect, if the parties on the first day have not a sect, is proved from Easter Term in the fifteenth year of king Henry, in the county of Surrey, concerning Ioetta de la Strode.

Chapter VIII.

1. An exception, that she was never espoused by the said man.

Likewise it is said, Such a woman who was the wife of so-and-so, to which the tenant may except that she was never his wife, because she was never espoused by him nor had he any connection with her. Likewise if he had any connection with her, he did not keep her except as his concubine. Likewise if she was espoused by him, she was not espoused in lawful matrimony, because he had married another woman in law, and her only in fact, or if he had no previous rightful wife, nevertheless she cannot claim dower, because a divorce was pronounced between them on account of consanguinity, or compaternity, or some other affinity.

2. Of an exception against a marriage.

Likewise if there has been a lawful marriage, the woman nevertheless at that time was so tender, that she could not support intercourse with the man, so that she could deserve a dower. Likewise if there was sometime a marriage, nevertheless it ceased on account of a divorec, and where from the beginning there was no marriage, there is no dower, and where from the beginning there was a marriage, there dower shall be as long as the marriage stands; if a divorce takes place on any grounds, the dower and the claim for dower ceases. Likewise if there be a lawful marriage as regards the heir and the succession to the inheritance, nevertheless it will be unlawful as regards the exaction of dower, when the dower has been established elsewhere than at the church door. But when such an exception is propounded that the

Britton, *ib.* § 3.

ceptio quòd dotē habere non debeat, eo quòd non fuit tali viro (ꝑ quem petit) matrimonialiter despōsata vel legitimo matrimonio copulata, hm̄odi inquisitio fieri nō potest nec debet in foro seculari, cum sit spirituale. Et ideo demandet inquisitio facienda ordinario loci, sicut archiepiscopo, ep̄o, vel aliis privilegiatis, quibus papa hujusmodi concesserit cognitionem, sed rex nūquam scribit nisi archiepiscopo vel episcopo. Forma brevis talis est.

f. 302 b.

3. Breve de mittendo inquisitionem ad curiam Christianitatis.

Rex tali archiepiscopo vel episcopo salutem. Sciatis quòd cum A. quæ fuit uxor B. in curia nostra &c. peteret versus C. tantam terram vel tertiam partem tantæ terræ cum pertinentiis in tali villa ut dotem suam, unde prædictus B. quondā vir suus eam dotavit ad ostium ecclesiæ: idē C. venit in eadem curia & objecit ei, quòd inde dotem habere non debuit, quia nunquam fuit prædicto B. matrimonialiter desponsata, vel legitimo matrimonio copulata. Et quoniam hujusmodi causæ cognitio ad forū spectat ecclesiasticū, vobis mandamus (quatenùs vocatis coram vobis convocandis) rei veritatem diligenter inquiratis, & inquisitionem quam inde feceritis sciri faciatis justitiariis nostris apud W. per litteras nostras patentes. T. &c.

4. De officio ordinarii. Britton, *ib.* § 4.

Ordinarius verò cùm literas domini regis acceperit (secundū considerationem Martini) ꝓcedere debet ad inquisitionē faciendam hoc modo. Et unde P. de Rupe tunc Winton. episcopus consuluit eundem Martinum in hoc casu. Qui ei rescripsit, quòd in quacūque dyoces. ille qui exceptionē opposuerit domicilium habuerit, fiat ei talis denuntiatio per ordinarium, quòd si voluerit veniat contra matrimonium dicturus, secundū quod ei

woman ought not to have a dower, inasmuch as she was not espoused matrimonially by the said man (through whom she claims) or was not coupled in lawful matrimony, an inquest on this subject neither can nor ought to be made in the secular court, since it is a spiritual matter. And therefore let the inquest be committed to be made by the ordinary of the place, the archbishop, bishop, or other privileged persons to whom the pope has allowed the cognizance of such matters, but the king never writes except to an archbishop or bishop. The form of the writ is of this nature.

f. 302 b.

3. A writ to send an inquest to a court of Christianity.

The king to such an archbishop or bishop greeting. Know ye, that when A. who was the wife of B. claimed in our court so much land or the third part of so much land with its appurtenances in such a vill as her dower, whereof the aforesaid B. formerly her husband endowed her at the door of the church: the said C. came into our court and objected to her that she ought not to have dower thereof, because she was never espoused matrimonially by the said B., nor ever coupled in lawful matrimony to him. And since the cognizance of a cause of this kind pertains to the ecclesiastical court, we command you (having called together such persons as ought to be convoked before you) that you diligently inquire into the truth of the matter, and make known to our justiciaries at Westminster the inquest which ye shall make thereon, by these our letters patent, Witness &c.

4. Concerning the office of the ordinary.

But the ordinary, when he has received the letters of our lord the king (according to the opinion of Martin de Pateshull), ought to proceed to make the inquest in this manner. And whereon Peter de la Roche then bishop of Winchester consulted the said Martin in this case; who wrote back to him, that in whatever diocese he who made the exception had his domicile, there should be notice given to him by the ordinary, that if he wished he should come to state anything against the marriage, ac-

viderit melius expedire, ad diem quā ordinarius ei præfixerit. Et sive tunc venerit sive non, testes, quos tunc mulier (quæ voluerit matrimonium ꝓbare), & qui certa ratione recusari non possit, ꝓduxerit, pro se admittantur. Et præstito sacramento, dicta eorum recitentur in publico, & veritate absquè magna juris solennitate (quasi summatim) inquisita, remittatur domino regi inquisitio vel justitiariis suis, secundum formam mandati, nec audietur quis appellans in hoc casu non magis quàm in inquisitione de bastardia, quia si talis audiretur appellans, protrahi posset negotiū in infinitū. Et sic mulier desperans in suo negotio, recederet de lite sua. Et quia solūmodo ad ꝑsonas & ordinarios in literis domini regis cōprehensos mandatur inquisitio, non extēditur jurisdictio ad alias ꝑsonas & maximæ[1] extra regnum, quia si episcopus ad appellationem alicujus partis ad dominum papam interpositam subsisteret nec ulteriùs inquireret, ꝑ hoc posset domino regi præjudicium generari, quia sic posset papa in hujusmodi casibus indistincte et quasi indirectè de layco feodo judicare ratione matrimonii, quia incidens est et non principale, sed laycum feodū. Sed quoniam dicit ubi nullum matrimoniū, ibi nulla dos, & e converso, ubi matrimonium ibi dos, et si ab initio matrimoniū ibi dos durāte matrimonio, & deficiente matrimonio deficiat dotis actio. Ideo de matrimonio videndū, de quo sequitur dotis exactio. Et ad hoc sciendū, quod habet quis legitimam concubinam, et ex ea ꝓlem in concubinatu, et postmodū contrahit cum eodem[2] clamdestinū matrimonium, et post contractū clamdestinū suscitat

Britton, v. ch. vii. § 5.

[1] "maxime," MS. Rawl. C. 160.
[2] "eadem," MS. id.

cording to what should appear to him to be expedient, on the day which the ordinary should appoint beforehand. And whether he then came or not, the witnesses, whom the woman who wishes to prove the marriage, and which witnesses cannot be rejected for any certain reason, may then have produced, shall be admitted on her behalf. And the oath having been administered to them, their evidence shall be stated in public, and the truth having been inquired into without any great formality of law (as it were summarily), let the inquest be remitted to the lord the king, or to his justiciaries according to the form of the mandate, nor shall an appellant be heard in this case any more than in a case of bastardy, because if such an appellant could be heard, the cause might be protracted infinitely. And so the woman, despairing of the business, would withdraw from her lawsuit. And because the inquest is committed only to the persons and ordinaries comprised in the letters of the lord the king, the jurisdiction is not extended to other persons, and especially not beyond the kingdom; because if the bishop upon the appeal of either party being interposed to the lord the pope should halt and not inquire further, prejudice might be done thereby to the lord the king, because in this manner the pope might in cases of this kind indistinctly and as it were indirectly judge concerning a lay fee in regard of the marriage, because this is an incident and not a principal matter, as the lay fee is. But since it is said where there is no marriage there is no dower, and conversely where there is a marriage there dower is, and if from the beginning there has been a marriage there dower is during the marriage, and where the marriage is deficient the action for dower fails. Therefore we must see concerning a marriage, from which the exaction of dower proceeds. And on this it is to be known, that a person has a lawful concubine, and has offspring from her in concubinage, and afterwards contracts with her a clandestine marriage, and after the

ab eo ꝑlem. Item postmodū contrahit eum eadem publicè et in facie ecclesiæ, et dotat eam ad ostium ecclesiæ: in hoc casu erit ille legitimus, qui ex clādestino matrimonio natus fuerit, dū tamē hoc ꝓbetur, et hæreditatem obtinebit. Et ille qui post solennitatem progenitus fuerit (quamvis legitimus) non erit hæres propinquior quoad successionem, sed mulier propter solennitatem & dotis constitutionem in facie ecclesiæ dotē obtinebit, secundum quod inferiùs dicetur de exceptione, quòd non ad ostium ecclesiæ. Item sciendū quòd matrimonium aliud de jure, aliud de facto, & potest quis plures habere uxores de jure, non tamen simul & semel, sed successivè: videlicet quamlibet post alteram, & ultima quæ fuerit in possessione viri mortis tempore dotem obtinebit, maximè si fuerit ad ostium ecclesiæ tempore desponsationis dotata, sive ꝑles suscitata fuerit ab omnibus uxoribus vel quibusdā. Itē plures poterit q̃s habere uxores simul & semel, sed necesse est ꝗ unam tantū habeat de jure, & omnes aliæ erūt uxores de facto, & sive unā habuerit sive plures de facto, prima tamē præcipua cū qua legitimè contraxerit ad ostiū ecclesiæ vel alibi (dum tamen sponsalia probentur sive per verba de præsenti sive ꝑ verba de futuro, dū tamen carnalis subsecuta fuerit cōmixio, erit uxor legitima quantū ad successionē & cōmodum hæredū & quantū ad dotis exactionem, dū tamen ad ostiū ecclesiæ fuerit dos cōstituta. In clandestino vero matrimonio nunquā dotē consequetur, si non ad ostiū ecclesiæ si cōtra ipsam dotem petentem fuerit conceptum, secūdum quod inferius dicetur plenius in exceptione, Si ad ostiū ecclesiæ.

f. 303.

Britton, v. ch. ii. § 2.

clandestine marriage has offspring by her. Likewise he afterwards contracts marriage with her publicly and in the face of the church, and endows her at the door of the church; in this case he will be legitimate who was born after the clandestine marriage, provided this be proved, and he shall obtain the inheritance. And he who was begotten after the solemnization of the marriage (although legitimate) will not be the nearest heir as regards the succession, but the woman on account of the solemnization of the marriage and the establishment of dower in the face of the church shall obtain dower according to what will be said below concerning the exception, that it was not established at the church door. And it is to be known that there is one marriage of right, and another of fact, and that a man may have several wives of right, but not at one time and together, but successively, to wit, one after the other, and the last who was in possession of the husband at the time of his death shall obtain dower, especially if she has been endowed at the church door at the time of her espousals, whether offspring have been produced by all the wives or by some. Likewise a man may have several wives at one and the same time, but it is necessary that he should have one only of right, and all the others will be wives in fact only, and whether he has one or more in fact, the first nevertheless and the chief wife, with whom he lawfully contracted marriage at the church door or elsewhere, (provided however espousals can be proved by words of present import or by words of future import, provided carnal connexion has followed) will be the lawful wife as regards the succession and advantage of heirs, and as regards the exaction of dower, provided however that dower was established at the church door. But in a clandestine marriage she will never acquire dower, if not at the church door, if it was conceived against her claiming dower, according to what will be said below more fully in the exception "if at the door of the church"

f. 303.

5. Facta probatione in curia Christianitatis et inquisitione, breve per quod summoneatur pars.

Probato igitur in curia Christianitatis matrimonio legitimo, cùm p litteras ordinarii constiterit regi vel justitiariis suis matrimonium esse probatum, statim ad instātiam mulieris fiat resummonitio loquelæ ad curiam domini regis, p tale breve: & summoneatur tenens ità. Rex vic. salutē. Summoneas p bonos summonitores C. quòd sit coram justic. nostris apud Westmonasteriū auditurus recordū & judicium suū de loquela quæ fuit in eadem curia nostra, coram justitiariis nostris &c. inter A. petentē & eundem C. tenentē de tanto terræ cum ptinentiis in tali villa, quam prædicta A. in curia nostra corā &c. clamavit in dotē versus eundē C., & inde loquela transmissa fuit ad curiam Christianitatis, eo quòd prædictus C. objecit eidem A. quòd nunquàm fuit B. legitimo matrimonio nec matrimonialiter copulata. Et habeas ibi sūmonitores & hoc breve. Teste, &c. Ad quē diem bene poterit C. se essoniare (si voluerit), & si nō venerit nec se essoniaverit, statim capietur terra in manū domini regis p parvum cape, & ipse sūmoneatur quod sit ibi auditurus judiciū suū. Et sive tunc venerit sive non, recuperabit statim A. dotē suam sine aliqua ulteriori dilatione, quia de cætero nullā poterit tenens opponere exceptionē ulteriorē per quam differatur juditium, quia nihil sequitur nisi judiciū, sive faciat p petente, sive pro tenente, sicut pbatur de termino Sancti M. anno regis Henrici decimo quinto incipiente decimosexto in com̃ South, de quadā Aldithia. Si autē p muliere faciat inquisitio, tunc fiat ei seysina p tale breve.

Proof and an inquest having been made in the court of Christianity, a writ whereby a party is summoned.

A lawful marriage having been proved in the court of Christianity, when by the letters of the ordinary it has been certified to the king or to his justiciaries that the marriage has been proved, forthwith at the instance of the woman let there be a re-summons of the cause into the court of the king by a writ of this kind, and let the tenant be thus summoned. The king to the viscount greeting. Summon by good summoners C. that he be present before our justiciaries at Westminster, in order to hear the record and the judgment against him in the cause which was in our said court before our justiciaries, &c., between A. as claimant and C. as tenant of so much land with its appurtenances in such a vill, which the aforesaid A. in our court before &c. has claimed as dower against the said C., and thereon a cause was transmitted to the court of Christianity, inasmuch as the aforesaid C. objected to the said A. that she had never been coupled to the said B. in lawful matrimony nor matrimonially. And have there present the summoners and this writ. Witness &c. On which day the said C. may well essoin himself (if he wishes), and if he has not come nor essoined himself, let the land be forthwith taken into the hands of the lord the king by the petty *cape*, and let him be summoned, that he be there to hear his own judgment. And then, whether he shall have come or not, A. shall forthwith receive her dower without any further delay, because the tenant cannot besides object any further exception whereby the judgment should be deferred, because there is nothing to follow but the judgment, whether it makes for the claimant or for the tenant, as is proved in Michaelmas term in the fifteenth and sixteenth years of king Henry in the county of South., concerning a certain Aldithia. But if the inquisition makes for the woman, then let seysine be given to her through this writ.

6. Breve de seysina facienda mulieri, si inquisitio fecerit pro ea.

Rex vic. salutē. Scias q A. quæ fuit uxor B. in curia nostra corā justiciariis nostris &c. p judiciū ejusdē curiæ recuperavit seisinam suam versus C. de tanta terra cū ptinētiis in tali villa ut de dote sua. Et ideo tibi præcipimus q eidē A. de prædicta terra cū pertinentiis (nomine dotis) sine dilatione plenariam seysinā habere facias. Si autē vir cui postea nupserit & uxor debeant nominari, tunc sic. Scias q A. de N. & B. uxor ejus &c. (ut supra) de tanta terra cum ptinētiis in tali villa ut de dote ipsius B. seysinā suā recuperaverint, & ideò tibi præcipimus q eisdem A. & B. de prædicta terra cum ptinentiis nomine dotis ipsius B. plenariam seysinam habere facias. Teste &c.

f. 303 b.

7. Si summonitus non venerit, nec se essoniaverit. Britton, *ib.* § 6.

Si autē summonitus ad diem suum non venerit nec se essoniaverit, tunc capiatur terra in manū dñi regis per defaltam, et ipse summoneatur quòd sit inde auditurus judicium suum ad alium diem p parvū cape &c. ut supra. Et si tenens ad diem non venerit, mulier recuperabit seysinam suam per defaltam, et fiat ei seysina sua per tale breve. Rex vic. salutem. Scias quòd A. quæ fuit uxor B. in curia nostra &c. recuperavit seysinam suam de tanta terra cum ptinentiis in N. ut de dote sua versus C. de N. per defaltā ipsius C. Et ideo tibi præcipimus quòd eidem A. &c. ut supra. Si autem recognita ei fuerit dos sine placito per licentiam, tunc sic. Scias quòd cùm A. in curia nostra &c. peteret versus C. tantam terrā cum pertinentiis in N. ut dotē suam, idem C. venit in eadem curia & recognovit & reconcessit eidem A. totam prædictam terram cum pertinentiis in dotem ipsius A., & ideò tibi præcipimus &c. ut supra.

6. A writ to give seysine to the woman, if the inquisition has made for her.

The king to the viscount greeting. Know thou that A. who was the wife of B. has in our court before our justiciaries, &c., through the judgment of the said court recovered her seysine against C. of so much land with its appurtenances in such a vill as her dower. And accordingly we enjoin you that you cause plenary seysine of the said land with its appurtenances to be given to the said A. without delay. But if the husband to whom she was afterwards married and the wife ought to be named, then thus. Know thou that A. of N. and B. his wife, &c. (as above) have recovered their seysine of so much land with its appurtenances in such a vill as the dower of the said B.: and accordingly we enjoin you that you cause plenary seysine of the aforesaid land with its appurtenances to be given to the said A. and B. in the name of the dower of the said B. Witness, &c.

f. 303 b.

7. If the party summoned has not come nor essoined himself.

But if the party summoned has not come on his day nor essoined himself, then let his land be taken into the hand of the lord the king by default and the said party be summoned by a little *cape* to be there to hear his judgment on another day &c., as above. And if the tenant has not come on the day, the woman shall recover her seysine by default, and let seysine be given to her through a writ of this kind. The king to the viscount greeting. Know thou that A. who was the wife of B. has in our court, &c. recovered seysine of so much land with its appurtenances in N. as her dower against C. of N. by the default of the said C. And accordingly we enjoin you that you give to the said A. &c., as above. But if her dower has been recognised without a plea through a licence, then thus. Know thou that when A. in our court, &c. claimed against C. so much land with its appurtenances in N. as her dower, the said C. came into our court and recognised it and regranted to the said A. the whole of the aforesaid land with its appurtenances as the dower of the said A., and accordingly we enjoin you &c., as above.

8. Si probatur in curia Christianitatis, et dum mulier est in veniendo versus curiam, moriatur tenens.

Cùm hujusmodi inquisitio ad curiā Christianitatis transmissa fuerit facienda, ꝑbato sufficienter matrimonio, & cùm mulier in veniendo sit cum inquisitione versus curiā, supvenit impedimentum sicut guerra, vel hujusmodi, quòd judiciū non poterit executioni demandari, et antequā ad curiam venerit moritur tenens in guerra fortè, & post guerrā impetrat mulier super hæredē vel aliū tenentem novum breve, ubi si tunc testatum fuerit, quòd sic sponsalia ꝑbavit tempore illius qui obiit, & quòd sic impedita fuit per guerram, sine aliqua alia ꝑbatione recuperabit seysinam suam: ut de itinere episcopi de Dunelm̄ et Martini de Pateshul in comitatu Eborum anno regis tertio, de Muriella quæ fuit uxor Hugonis de Haverton: per simile videtur, q si mulier petat aliquē in virum, & sententia lata fuerit ꝑ muliere, & ab ea non sit appellatum, si vir moriatur ante executionem judicii, ipsa sine alia ꝑbatione dotem obtinebit.

Cap. IX.

1. Si dicat, ubicunque fuerit desponsata, nunquam fuit ei dos constituta, vel quod non ad ostium ecclesiæ. Item ubi conceditur matrimonium, et excipitur contra dotem.

Concedere verò poterit tenens excipiendo, q desponsata fuit ad ostium ecclesiæ vel alibi, sed nūquā fuit dos ei constituta. Quo casu, nō erit inquisitio facienda in foro ecclesiastico, sed in curia regis cū mulier dicat cōtrariū. Itē concedere potest q desponsata fuit & dos constituta, sed non ad ostium ecclesiæ die quo desponsata fuit: quo casu, eodē modo fiat inquisitio in curia regis, quia non erit màgis demandanda judici ecclesiastico, quā inquisitio de bastardia, ubi sic objecta fuerit, vz. utrū quis natus fuerit ante matrimonium vel post. Et quod mulier dotem petere non poterit, nisi dotata fuerit ad ostium ecclesiæ (si hoc ei fuerit ob-

When an inquisition of this kind has been transmitted to the court of Christianity to hold, the marriage having been sufficiently proved, and when the woman is in the course of coming with the inquisition to the court, an impediment, such as a war, supervenes or such like, so that the judgment cannot be committed to execution, and before she has come to the court the tenant dies in the war perhaps, and the woman after the war sues out a new writ against the heir or another tenant, where if it be then testified that she has proved her espousals in the time of him who has died, and that she has been so hindered by the war, she shall without any other proof recover her seysine, as in the iter of the bishop of Durham and Martin de Pateshull in the county of York in the third year of the king, concerning Muriel who was the wife of Hugh de Haverton: by a like case it seems that if a woman claims a certain person as her husband, and sentence has been given for the woman, and no appeal from it has been made, if the man dies before the execution of the judgment, the said woman shall obtain dower without any other proof.

8. If it is proved in the court of Christianity, and whilst the woman is in the course of coming to the court, the tenant dies.

Chapter IX.

But the tenant may concede the marriage by excepting that she was espoused at the church door or elsewhere, but dower was never appointed to her. In which case an inquisition will not have to be made in the ecclesiastical court but in the court of the king, when the woman says the contrary, Likewise he may concede that she was espoused and dower was appointed to her, but not at the church door on the day on which she was espoused, in which case let an inquisition be made in the court of the king in the same manner, because it is not to be committed to the ecclesiastical judge any more than an inquisition concerning bastardy, where it has been thus objected, whether a person was born before or after matrimony. And that a woman cannot claim dower unless she was endowed at the door of the church, if this

1. If he should say that wherever she was espoused dower was never appointed to her, or not at the door of the church. Likewise when the marriage is conceded and exception is made against dower.

f. 304.
Britton, *ib.* § 8.

jectum in īpetratione dotis) ꝓbatur in itinere W. de Ralegh in comitaī Buck., de Alicia quæ fuit uxor Baldwyn, quia si mulier in petitione dotis omiserit ista verba (et unde talis vir meus me dotavit ad ostium ecclesiæ) amittet dotē sine aliqua recuperatione. Et ad hoc facit q habetis de termino S. Michaelis anno regis Henrici octavo incipiente nono in comitatu Hertford, de Alicia quæ fuit uxor Rogeri de Camera. Item ad hoc facit q habetis in eodē comitatu Buck. de Isabella quæ fuit uxor Roberti. Itē ad hoc facit de termino S. Michaelis anno regis Henrici nono incipiēte decimo in comitatu Oxoñ, de Alicia quæ fuit uxor Jacobi de Cardevile, ubi judiciū redditū fuit quòd mulier dotem petere non potuit, quia nō fuit desponsata ad ostiū ecclesiæ. Et in eisdem cōcordantiis reperitur q inquisitio de hujusmodi faciēda erit in curia dñi regis, & non in foro ecclesiastico. Et unde inquirēdū est muliere ubi, & quando, & in qua ecclesia fuit desponsata. Et de inquisitione faciēda fiat tale breve: Rex vic. salutē. Præcipimus tibi quòd venire facias corā te & corā custodibus placitorū coronę nostrę in pleno comitaī duodecim tam milites quàm alios liberos & legales homines de visineto tali, & p sacramentum eorum diligenter inquiras si A. de N. die, quo desponsavit B. uxorem suam apud talē ecclesiam, dotavit eam de tanto terræ cum ptinentiis in tali villa solēniter & ad ostium ecclesiæ, sicut prædicta B. dicit, vel si illam despōsavit in lecto suo mortali absquè aliqua solennitate, & ibi eā dotavit sicut prædict⁹ talis dicit. Et inquisitionē, quā inde feceris, scire facias justiciariis nostris literas &c. & p duos &c. Et ita poterit esse

objection has been raised against her in her suit for dower, is proved in the iter of William de Ralegh in the county of Buckinghamshire, concerning Alice, who was the wife of Baldwin, because if a woman has omitted these words, "and of which so-and-so my husband en-"dowed me at the church door," she will lose her dower without any recovery. And this is supported by what you have in Michaelmas term in the eighth and ninth years of king Henry, in the county of Hereford, concerning Alice who was the wife of Roger de Camera. Likewise this is supported by what you have in the same county of Buckingham concerning Isabella who was the wife of Robert. Likewise this is supported in Michaelmas term in the ninth and tenth years of king Henry, in the county of Oxford, concerning Alice who was the wife of Jacobus de Cardeville, where judgment was rendered that the woman could not claim dower, since she was not espoused at the church door. And in the same accords it is found that an inquisition on this subject is to be made in the court of the king, and not in the ecclesiastical court. And hence it is to be inquired of the woman where, and when, and in what church she was espoused. And concerning the holding of the inquisition let a writ of this kind issue. We enjoin you that you cause to come before you and before the keepers of the pleas of our crown in a full county court twelve as well knights as other free and loyal men of such a visne, and by their oath diligently inquire if A. de N. on the day on which he espoused B. his wife at such a church endowed her with so much land together with its appurtenances in such a vill solemnly and at the door of the church, as the aforesaid B. says, or if he espoused her on his death-bed without any solemnity, and there endowed her as so-and-so aforesaid says. And the inquest which you shall make thereon you shall cause to be made known to our justiciaries by letters &c. and by two &c. And thus a marriage may be legitimate as regards the succession to an inheritance, wherever it has been con-

f. 304.

matrimoniū legitimum, quoad p hereditatis successionē, ubicunq contractū fuerit, dum tamen pbatum: & illegitimū quoad dotis exactionē, nisi fuerit in facie ecclesiæ contractū, & ibi dos constituta cum solennitate, quæ tunc adhiberi potest tam tēpore interdicti quàm alio tempore. Cum autem vir dotem ad ostium ecclesiæ nominaverit (ut prædictum est) certam & nominatā, vel incertam & non nominatam, quæritur an vir postmodū mutare potest modum et constitutionē dotis, dotē augendo vel minuendo? & videtur q non; quià sicut nominata est ad ostium ecclesiæ vel non nominata, ita peti potest & non aliter, ppter verba: & unde dotata fuit ad ostium ecclesiæ. Quia istæ dictiones (ut prædictum est) semper exprimi debent in petitione dotis, & quia inde oritur exceptio tenenti, quòd aliter dotata fuit ad ostium ecclesiæ. Concedere etiā poterit tenens quod mulier fuit desponsata & ad ostium ecclesiæ dos constituta. Sed excipere potest, quòd postmodū fuit matrimonium solutum, & divortium celebratum inter ipsam & virum suum ppter consanguinitatem, compaternitatem, & aliam affinitatem, & quamdiu duravit matrimonium duravit dotis exactio, ea deficiente deficit dotis petitio, quod si probatum fuerit, etiam in curia regis amittit dotem. Poterit tamen replicare contra exceptionem illam, quòd si aliquando fuit matrimonium inter eos accusatum, nunquam tamen fuit in vita viri sui solutum, nec divortium celebratum: vel si aliquando fuit contra ipsum judicatum, tamen à sententia illa fuit appellatum, & in causa appellationis fuit pro ea judicatum, ita quòd fuit in possessione viri sui die quo obiit, vel dicere poterit, q vir suus obiit antequā in causa appellationis fuit conclusū.

tracted, provided only it be proved, and illegitimate as regards the exaction of dower, unless it has been contracted in the face of the church, and there dower has been appointed with the solemnity, which may be there employed as well at the time of an interdict as at any other time. But when a man has named a certain and specified dower (as aforesaid) at the door of the church, or an uncertain and unspecified dower, it is asked whether a man can afterwards change the mode and appointment of the dower, by augmenting or diminishing the dower, and it seems that he cannot, for according as it has been specified at the door of the church or not specified, so it may be claimed and not otherwise on account of the words " and whereof she was endowed at " the door of the church." Because those expressions (as aforesaid) ought always to be expressed in the claim of dower, and because there arises therefrom an exception for the tenant that she was endowed otherwise at the door of the church. The tenant may also allow, that the woman was espoused and dower appointed at the door of the church. But he may except that afterwards the marriage was dissolved, and a divorce celebrated between her and her husband on account of consanguinity, compaternity, and other affinity, and as long as the marriage lasted, the exaction of dower lasted, when that ceased, the claim for dower ceases, which if it be proved, she loses her dower even in the court of the king. She may however reply against that exception, that if the marriage between them was at one time impeached, it was never dissolved in the lifetime of her husband, nor was a divorce celebrated : or if there was a judgment at one time against the marriage, nevertheless there was an appeal from the sentence, and judgment was given for her on the appeal, so that she was in possession of her husband on the day on which he died, or she may say that her husband died, before the judgment was concluded in the court of appeal.

f. 304 b.

2. Item dicere potest, quod aliter dotata fuit, ut si dicit non nominatim, responderi poterit de tertia parte, vel hujusmodi.

Poterit etiã tenens dicere sive sit hæres sive sit alius, & cõcedere mulierẽ esse despõsatam & dotatã ad ostium ecclesiæ, sed aliter quàm in intensione sua ꝑponit: ut si dicat quòd dos fuit ei nominatim cõstituta, & certo loco, excipi poterit à tenẽte quòd cõstituta fuit ei per totum, & in tertia parte, quo casu mulier necesse habet ꝓbare intentionẽ suam, & dictum suum, ꝑ audientes & videntes, qui desponsationi interfuerint, qui præsentes incõtinẽti parati sint hoc per sacramẽtum confirmare: & eorum stabitur ꝓbationi (si examinati cõcordẽt) nisi hæres vel alius tenens ꝓbationẽ habuerit validiorẽ ad ꝓbandum contrariũ. Si autem mulier nullam habuerit probationem pro se, nec sectã sufficientem, nec etiam instrumentum, tunc pro tenente judicabitur, si ꝓbationẽ habuerit sufficiẽtem & plenam sive semiplenam, propter præsumptionem: si autem omninò nullã, pro eo judicabitur propter commodum possessionis: vel si mulier habuerit sectam sufficientem, & tenens non nisi simplicem vocem suam, licet paratus sit se ponere super patriam, non audietur, sed mulier recuperabit: ut de termino Sancti Hillarii anno regis Henrici nono in comitatu Devon., de Alicia quæ fuit uxor W. de Thornton & Matheo de Thornton. Item cùm ex utraq; parte ꝓducti sunt testes & una pars dicat quòd nesciat utrum ita sit vel non sit, & alia pars dicat præcisè quòd ita sit, sicut ille dicit ex cujus parte ꝓducitur, judicabitur ꝓ illa ꝑte quæ scit veritatem: ut de eodẽ termino Sancti H. anno eodẽ ejusdẽ regis in comitatu North., de Wilhelmo de Dauẽtre, quia semper oportebit mulierẽ ꝓducere sectam, alioquin vacua erit in omni casu petitio sua. Item si testes

The tenant also will be able to say, whether he be the heir or another person, and to concede that the woman was espoused and endowed at the door of the church, but otherwise than she propounds in her declaration: as if she should say that a dower was appointed to her specifically and in a certain place, it may be excepted by the tenant that it was appointed to her throughout the entire estate and of the third part, in which case the woman will be under the necessity to prove her declaration, and her statement by persons who heard and saw it, who were present at the espousals, and who being present are forthwith prepared to affirm this by their oath, and their proof shall hold good, if on examination they are of accord, unless the heir or other tenant shall have stronger evidence to prove the contrary. But if the woman have no evidence in her favour, nor a sufficient sect, nor even an instrument, then judgment shall be given for the tenant, if he have a sufficient and complete proof or even a half-complete proof on account of the presumption in his favour; but if he has altogether no proof, it shall be adjudged in his favour on account of the advantage of his possession: or if the woman has a sufficient sect and the tenant has only his single voice, although he may be willing to put himself on the country, he shall not be heard, and the woman shall recover, as in Saint Hilary's term in the ninth year of king Henry in the county of Devon, concerning Alice who was the wife of William de Thornton against Matthew de Thornton. Likewise when witnesses have been produced on either side, and one party says that he knows not whether it be so or not so, and the other party says precisely that it is so as he says on whose part he is produced, it shall be adjudged for that party which knows the truth, as in the same term of St. Hilary in the same year of the same king in the county of Northumberland, concerning William of Daventry, because it will be incumbent on the woman always to produce a sect, otherwise her petition will be void in

2. Likewise he may say, that she was otherwise endowed, as if she should say not specifically, it may be answered with the third part or such like.

ꝓducti nihil ꝓbaverint, vel cognoscant q desponsationi interfuerunt, vel dicāt q nihil sciant de dote, vel ejus cōstitutione: tunc non valet q agitur, quasi deficiēte mulieris ꝓbatione, & tenens quietus recedat, sicut videri poterit in itinere M. de P. anno regis Henrici decimo in coñ. Eborum, de Emma quæ fuit uxor Raymeri le Franceys. Item si testes qui ꝓducti fuerint ex ꝑte mulieris plenè ꝓbaverint dictū suum, & quòd despōsationi interfuerint, & q sic dotata fuit sicut ipsa dicit, recuperabit mulier petens, secundū q inveniri poterit in itinere M. de P. in comitatu Suff. anno regis Henrici decimo, de comitissa de Oxoñ & Wilhelmo Blūdo & Cecilia uxore ejus, ubi ex utraq; ꝑte ꝓducta fuit secta. Si autē neutra pars sectam habuerit, nec ꝓbationē, nec saltē præsumptionē, nec instrumentum, & utraq; pars de veritate ponat se super patriā ꝑ defectu sectæ vel alterius ꝓbationis quā ad manum non habuerit, tunc fiat inquisitio de veritate ꝑ tale breve.

3. Quod inquiratur per patriam, ubi secta defecerit et alia probatio.

Rex vic. salutē. Præcipimus tibi q diligenter inquiras, qui interfuerunt apud talē ecclesiam ubi A. desponsavit B. uxorē suam, & tam ex ipsis quā ex aliis de ꝓximo visneto talis villæ per quos &c. venire facias coram justitiariis &c. ad talem diem duodecim liberos & legales homines, ad recognoscendū (super sacramentum suum) si prædictus A. die quo ipsam B. despōsavit dotavit eam nominatim de tali manerio cum pertinentiis, quod prædicta B. in eadē curia nostra clamat ut dotē suam versus C. & sicut prædicta B. dicit, vel si eam dotavit de tertia parte omnium terrarum & tenementorū unde fuit in seysina die quo eandem B. desponsavit, ut idē C. dicit, quia tam prædictus B. quàm prædictus C. posuerunt se &c. ut supra.

f. 305.

every case. Likewise if the witnesses produced have proved nothing, or acknowledge that they were present at the espousals, or say that they know nothing concerning the dower or its appointment, then that which is done is of no avail, as if the proof of the woman was deficient, and the tenant goes away quit, as may seen in the iter of Martin de Pateshull in the tenth year of king Henry in the county of York, concerning Emma, who was the wife of Reymer le Franceys. Likewise, if the witnesses, who have been produced on the part of the woman, have fully proved her statement, and that they were present at the espousals, and that she was endowed as she states, the woman claiming dower shall recover it according to what may be seen in the iter of Martin de Pateshull in the county of Suffolk in the tenth year of king Henry, concerning the countess of Oxford and William Bland and Cecilia his wife, where a sect was produced on either side. But if neither party has a sect, nor a proof, nor at least a presumption nor an instrument, and each party concerning the truth places himself upon the country by reason of the defect of a sect or other proof which he has not at hand, then let an inquest be held as to the truth by such a writ.

3. That an inquest be made by the country, where a sect and other proof are deficient.

The king to the viscount greeting. We enjoin you that you diligently inquire who were present at such a church when A. espoused B. as his wife, and cause to come as well of those as of others from the nearest visne of such a vill through whom &c. before our justiciaries on such a day twelve free and loyal men to recognise upon their oath, if the aforesaid A. on the day on which he espoused the said B. endowed her specifically with such a manor with its appurtenances, which the said B. in our said court claims as her dower against C. and as the aforesaid B. says, or if he endowed her with the third part of all his lands and tenements, whereof he was in seysine on the day on which he espoused the said B. as the said C. says, because the aforesaid B. as well as the aforesaid C. have placed themselves upon the

f. 305.

Itē variari poterit breve inquisitionis multiplicitèr, secundū varietatē recordorū ita. Si prædictus A. die quo ipsam B. despōsavit dotavit eam de viginti acris terræ cum ꝑtinentiis in N. &c. (ut supra) vel si eam dotavit de tertia parte tantæ terræ cum pertinentiis in N. &c. vel aliter: si eam dotavit de tertia parte totius hæreditatis quam tunc tenuit hæreditariè et in dominico: vel de tertia parte totius quæstus sui quem postmodum ea vivente posset acquirere: vel, si eum[1] dotavit de tanto terræ vel tāto de hæreditate sua[2] quā habuit die quo prædictam B. desponsavit, ut idem C. dicit, & unde prædicta B. ad ostium ecclesiæ quando desponsata fuit, tenuit se contentam, quia tam prædicta B. quā prædictus C. posuerunt se in inquisitionem illā, & inquisitionem illā venire facias &c. T. &c. & ad hanc inquisitionem inducere poteritis omnia genera constitutionis dotis, cōtra quæ aliquo modo excipi possit. Fit autem quandoq, de constitutione dotis & modo cōstituendi ꝑbatio ꝑ instrumenta, quæ quidē si non fuerint recognita, fides eorum multipliciter ꝑbari poterit, vel per collationem signorū, vel per testes, vel per patriam, & aliis multis modis, ut supra de fide instrumentorum plenius.

Cap. X.

1. Si de modo constitutionis dotis proferatur instrumentum in re aliena.

Sed quid si instrumentum dicat ꝗ alius à viro dotaverit uxorem? non valebit talis constitutio, nec dotis petitio, propter verba contenta in intensione, & unde talis vir suus eam dotavit &c., sed hoc verum est si tenementum illud fuerit viri sui, secùs si alienum: ut si quis uxorē suam dotaverit ad ostium ecclesiæ de re

[1] "eam," MS. Rawl. C. 160.

[2] "de tanto terræ vel, de tanto de hæreditate sua," MS. id. "de tanto terræ tantum vel tantum de hæreditate suā," M.S. Reg. 9 E. xv.

country &c. Likewise the writ of inquisition may be varied in a manifold way, according to the variety of the records thus: if the aforesaid A. on the day on which he espoused the said B. endowed her with twenty acres of land with their appurtenances in N. &c. (as above), or if he endowed her with the third part of so much land with its appurtenances in N. &c. (as above), or otherwise, if he endowed her with the third part of his whole inheritance, which he then held by inheritance and in domain, or with the third part of all his acquisitions which he afterwards during her lifetime could acquire: or if he endowed her with so much of his land or with so much of his inheritance which he had on the day on which he espoused the aforesaid B., as the said C. says, and wherewith the aforesaid B. at the door of the church when she was espoused held herself content, because as well the aforesaid B. as the aforesaid C. have put themselves on that inquest and have caused that inquest to come &c. Witness &c. And on this inquest you may introduce every kind of appointment of dower, against which exception may be made in any manner. Sometimes proof concerning the appointment of dower and the mode of appointing is made by instruments, which if they are not acknowledged, their faith may be proved in manifold ways, either by the comparison of signatures, or by witnesses, or by the country, and in many other ways, as above has been more fully stated concerning the faith of instruments.

Chapter X.

1. If concerning the mode of the appointment of dower an instrument is produced, referring

But what if the instrument should say, that another person than the husband endowed the wife? such an appointment will not be valid, nor the claim for dower, by reason of the words contained in the declaration, "and whereof so-and-so her husband endowed her." But this is true, if the tenement has been her husband's, otherwise if another person's; as if a person has endowed his wife at the door of the church out of the

patris vel matris vel alterius parentis vel amici, quorum consensus erit requirendus, ut si dicatur: & unde talis vir suus eam dotavit per assensum patris vel matris, vel alterius amici. Et unde incōgruè conficitur instrumentum q pater vel alius dotavit uxorem filii. Sed si quis diligenter vim constitutionis ꝑspexerit, non erit ibi incongruitas, quia ad hoc q valeat constitutio dotis de re aliena, oportet q duo conveniant in constitutione, videlicet nominatio et consensus, quia neutrum illorum sufficit sine alio, quia si filius nominat & pater non consentit, non valet sine consensu: si autem filius non nominat, licet pater consentiat, non valet consensus sine nominatione filii. Conjunctis igitur nomine & consensu fit valida constitutio. Non est igitur instrumentū reprobandum cùm uterquè dotat, videlicet filius ex nominatione, & pater ex consensu. Et si donatio patris plenè non sufficiat per se, valeat tamen ad consensum cum nominatione. Sed videndum si consensus fieri possit ante constitutionem dotis, per literas, vel alio modo in absentia cōsentientis, vel si in cōstitutione dicatur in absentia sua quòd assenserit cùm non consenserit, & si valere debeat ꝑ ratihabitionem, videtur quòd valeat, facta relatione de consensu ad ostium ecclesiæ. Quòd valere nō debeat videtur, cùm absēs non sit, si autē ad dotē, bene valet. Si quia nominatio per se nō valet, nec per se sine consensu, nec alicubi quàm ad ostium ecclesiæ, & personaliter, ita non valet consensus nisi personaliter.

Britton, v. ch. ix. § 1.

Britton, *ib.* § 2.

f. 305 b.

2. De cujus assensu fit talis

Cùm de consēsu patris, vel matris, vel parentis, vel alterius amici, possit filius dotare uxorē: videndū qua-

estate of his father, or of his mother or of another relation or friend, whose consent is to be required, as if it be said, " and whereof so-and-so her husband endowed her " with the assent of his father, or his mother, or another " friend." And whereof the instrument is incongruously drawn, because the father or another has endowed the wife of his son. But if a person has diligently perceived the force of the appointment, there will not be there any incongruity, because for the purpose that the appointment of dower from another person's estate should be valid, it is incumbent that two things should be combined in the appointment, to wit, the specification and the consent, because neither of these is sufficient without the other, because if the son specifies and the father does not consent, it is not valid without his consent, but if the son does not specify, although the father consent, his consent does not avail without the specification of the son. But when the specification and the consent are combined, the appointment becomes valid. The instrument therefore is not to be disapproved when both endow, to wit, the son by his specification, and the father by his consent. And if the donation of the father is not fully sufficient by itself, it would avail for consent with the specification. But it is to be seen if consent may be given before the appointment of dower, by letters or in some other manner in the absence of the consenting party, or if it be said in the appointment in his absence that he has assented when he has not consented, and if it ought to be valid by ratification: it seems that it would be valid, reference having been made to the consent at the door of the church. It seems that it ought not to be valid, when he is not absent, but if [he be present] at the dower it is quite valid. But because a specification by itself is not valid, nor by itself without a consent, nor elsewhere than at the door of the church and personally, so a consent except personally is not valid.

to the estate of another person.

f. 305 b.

Since with the consent of a father, or of a mother, or of a relation, or of another friend, a son may endow his wife,

2. With whose

constitutio dotis.

liter fiat hujusmodi dotis cōstitutio, et cujus cōsensus fuerit inquirendus. Et sciendū, quod cujuslibet de cujus assensu fuerit constituta, & tam de assensu & voluntate matris, quā patris: ut de termino S. M. anno regis Henrici decimo septimo in comitatu Salop̄, de quadā Emma quæ petiit dotē, & eodem modo cujuslibet alterius cujus assensus requiritur. Et si dos taliter constituta non restituatur, consulitur ei per tale breve.

3. Si de consensu patris vel matris vel alterius amici dotata fuit.

Rex vic. salutē. Præcipe A. q justè & sine dilatione reddat B. quæ fuit uxor C. tantum terræ cum pertinentiis in tali villa unde idem C. quondā vir suus & hæres ipsius talis eam dotavit de volūtate prædicti talis patris sui vel matris suæ vel hujusmodi quādo eam despōsavit ad ostiū ecclesiæ, & unde nihil habet, ut dicit, & unde queritur, q prædictus A. ei deforceat, & nisi fecerit, & prædicta B. fecerit te securum &c. ut supra. Sūmonitus autē antequam cōparuerit unicum habebit essonium (sicut superius) & de defalta & aliis fiat, ut supra, donec comparuerit. Cùm autem comparuerit, satis perpendi poterit qualiter mulier ꝓponere debeat intentionem ex præmissis. Et ꝓposita intentione, oportet quòd habeat sectam ad ꝓbandam, vel aliam ꝓbationem ut supra ꝓbatur: & ita fiat probatio hic sicut ibi. Sed si juratores dubiè respondeant in parte, & in parte dicant quòd bene sciūt quòd talis mulier fuit desponsata, sed nesciunt si dotata fuit per assensum necne, non recuperabit, nisi ita sit fortè quòd vir suus seysinā habuerit de eadem terra aliquo tem-

it is to be seen in what manner an appointment of dower of this kind is made, and whose consent is to be ascertained. And it is to be known that [the consent is to be ascertained] of each person with whose assent the dower is appointed, and as well concerning the assent and willingness of the mother as of the father, as in Saint Michael's term in the seventeenth year of king Henry in the county of Salop, concerning a certain Emma who claimed dower, and in the same way of every other person whose assent is required. And if dower so appointed is not restored, redress is afforded to her by a writ of this kind.

consent such an appointment of dower is made.

The king to the viscount greeting. Enjoin A. that justly and without delay he restore to B. who was the wife of C. so much land with its appurtenances in such a vill whereof the said C. formerly her husband and the heir of the said so-and-so endowed her with the good will of the aforesaid so-and-so his father or of his mother or of such like persons when he espoused her at the door of the church, and whereof she has nothing as she says, and whereof she complains, that the aforesaid A. deforces her, and unless he shall so have done and the aforesaid B. has given you security, &c., as above. But the person summoned shall have before he has appeared a single essoin (as above), and concerning his default and other things let it be done, as above, until he has appeared. But when he has appeared, it can be sufficiently discovered from what has been premised how the woman ought to propound her declaration. And upon her declaration having been propounded, it is incumbent that she have a sect to prove it, or some other kind of proof, as is proved above, and let the proof be made here in the same manner as there. But if the jurors reply doubtfully in part, and in part say that they know well that such woman was espoused, but they do not know if she was endowed through the assent of some one or not, she shall not recover, unless it should be by chance that her husband had seysine of the said land at some time during his life, because then

3. If she has been endowed with the consent of the father or mother or other friend.

pore in vita sua, quia tunc sufficit mulieri seisina viri quoad dotis exactionē, licet assensus parentum non valeat: ut de termino S. Hillarii anno regis Henrici decimotertio in fine rotuli.

4. De exceptione contra mulierem sic dotatam.

Cùm verò contra mulierem excipiatur quòd nunquàm dotata fuit per assensum & voluntatem talis antecessoris, & mulier dicat quòd sic, fiat inquisitio per breve in hac forma.

5. Inquirendum, si dotata fuit per assensum.

Rex vic. salutem. Præcipimus tibi q diligentèr inquiras qui interfuerunt ubi A. desponsavit B., & tam ex illis quā ex aliis legalibus & discretis hominibus de cōm tuo venire facias coram justic. nostris tali die duodecim, ad recognoscēdum si idem A. die quo eandem B. desponsavit, dotavit eam per assensum & voluntatem talis vel non. De hac materia inveniri poterit in rotulo de termino S. Trinitatis anno regis Henrici quarto in comitatu Suff., de quadam Alexandria.

f. 306.

Cap. XI.

1. Quod competit exceptio hæredi ex pluralitate mulierum dotem petentium.

Competit etiam tenenti hæredi vel non hæredi exceptio ex pluralitate mulierum dotem petentium de morte unius viri, ut si duæ sint petētes, excipere potest quòd non debet duabus respondere, non magis (ut videtur) quā si duo unum implacitent de eadem terra, de tota vel de aliqua ejus parte, sive placitum sit super possessione, sive super ꝓprietate. Et unde inprimis videndum, utrum duæ, cùm nullam dotem habuerint dotem petierint, versus tenentē, vel cùm una dotem habuerit & alia nihil, & illa quæ nihil habet dotem petierit versus eum qui habet duas partes, &

the seysine of the husband suffices for the woman as regards the exaction of dower, although the assent of relations does not avail, as in St. Hilary term in the thirteenth year of the reign of king Henry at the end of the roll.

4. Of an exception against a woman so endowed.

But when it is excepted against a woman that she was never endowed with the assent and good will of such an ancestor, and the woman says that it was so, then let an inquisition be made in this form.

5. An inquest is to be made if she was endowed with the assent of certain persons.

The king to the viscount greeting. We enjoin you that you diligently inquire who were present when A. espoused B., and as well of those as of other loyal and discreet men of your county, you cause twelve to come before our justiciaries on such a day to recognise if the said A. on the day on which he espoused the said B. endowed her with the assent and good will of so-and-so or not. Concerning this matter something will be found in the roll of Holy Trinity term in the fourth year of king Henry in the county of Suffolk, concerning a certain Alexandria.

Chapter XI.

f. 306.

1. That the heir may except on account of the plurality of women claiming dower.

But the tenant, whether he be the heir or not, is entitled to except on account of the plurality of women claiming dower upon the death of one man, as if there be two women claiming, he may except that he ought not to answer to two women, no more (as it seems) than if two persons should implead him for the same land, for the whole of it or for a certain part of it, whether the plea be about the possession or about the property. And whence we must see in the first place, whether the two women, when they have had no dower, claim dower against the tenant, or when one has had dower and the other nothing, and she, who has had nothing, claims against him who has the two thirds, and in like manner

similiter versus mulierem quæ tertiam partem tenet nomine dotis, quæ postmodùm vocaverit ad warantum hæredem, vel alium de dote sua, ut sciri possit ad quem pertineat exceptio contra mulierem petentem, quia cùm warantus warantizaverit, necesse habet defendere mulierem quæ in possessione fuerit, & sic competit ei exceptio, cum defensionem susceperit per warantiam. Excipere enim poterit sic nomine proprio, quòd mulier petens dotem habere non debeat hac ratione, quia A. cujus nomine dotem petit, habuit quandam uxorem B. nomine, quæ fuit cum A. viro suo per decem annos, tam in Anglia quàm in Hybernia, & sic in seysina fuit de prædicto A. viro suo quando obiit, & ideo assignata fuit ei dos sicut uxori legitimæ. Ad quod verò mulier petens respondit quòd tenens injustè hoc dicit, quia prædicta B. quæ se fecit uxorem prædicti A. non fuit uxor ejus, & hoc bene patuit, quia ipsa quæ nunc dotem petit aliquando petiit ipsum A. ut virum in curia Christianitatis apud talem locum, coram talibus judicibus, & per judicium in eadem curia disrationavit ipsum A. ut virum suum, præsente ipsa B. Et hoc offert se probare, & tenens e contra dicit (ut priùs) quòd prædicta B. semper fuit cum eodem A. sicut uxor sua, & in vita & in morte, sine aliquo clamore vel quæstione mota à muliere quæ nunc petit. Et mulier petens quæsita ubi & quando desponsata fuit ipsi A. & si probationem habeat de dicto suo probando? & respondit quòd sic, & unde eadem diem habuit ad probandum. Sed quia ad diem illum nullam probationem habuit, nihil recuperavit. Et de hac materia inveniri poterit anno regis Henrici decimo in banco, de Alicia & Juliana, quæ fuit uxor Thomæ de Fughelstone, petentem[1] dotem, & cui à te-

[1] "petente," MS. Rawl. C. 160, et 9 Reg. E. xv.

against the woman who holds a third part in the name of dower, who has afterwards called the heir, or some-one else, as her warrantor respecting her dower, that it may be known to whom appertains the exception against the woman claiming, because when the warrantor has warranted, he is under the necessity of defending the woman who is in possession, and so he is entitled to an exception, since he has undertaken by his warranty the defence. For he may except thus in his own name, that the woman claiming dower ought not to have it for this reason, because A. in whose name she claims dower, had a certain wife B. by name, who was with her husband A. during ten years as well in England as in Ireland, and so was in seysine of her said husband when he died, and therefore dower was assigned to her as his legitimate wife. To which however the woman claiming answered that the tenant states this unjustly, because the afore-said B. who made herself out as the wife of the aforesaid A. was not his wife, and this was perfectly clear, be-cause the said woman who now claims dower once on a time claimed the said A. as her husband in the court of Christianity at such a place, before certain judges, and by a judgment in the same court derayned the said A. as her husband, B. herself being present. And this she offers to prove, and the tenant on the contrary says (as before) that the aforesaid B. was always with the said A. as his wife both in life and in death, without any claim or question having been raised by the woman who now claims. And the woman claiming having been ques-tioned where and when she was espoused to the said A., and if she has any proof to prove her assertion? and she answered in the affirmative, and thereupon she had a day assigned to her to prove. But because on that day she had no proof, she failed to recover. And on this matter some-thing will be found in the tenth year of king Henry in banco, concerning Alicia and Juliana who was the wife of Thomas de Fughelstone claiming dower, and to whom it

nente objectum fuit quòd dotem habere non debuit, quia quædam Isabella Decursum fuit uxor prædicti Thomæ, & idem Thomas de ea obiit seysitus sicut de uxore sua. Et post mortem dicti Thomæ secundum legem Kanc. pleniùs habuit dotem suam de toto tenemento quod fuit ipsius Thomæ, & petit judicium si debeat duabus fæminis de uno tenemento & morte unius viri sui dotem facere. Ad quod respondit ipsa A. quòd ipsa fuit uxor prædicti Thomæ & non ipsa Isabella: sed revera dicit quod prædicta Isabella fuit cum prædicto Thoma sicut adultera & non sicut uxor legitima. Quibus auditis, consideratum fuit ibi quòd Alicia (si vellet) implacitaret ipsam Isabellam, & si posset ostendere quòd ipsa Isabella non fuit uxor ipsius Thomæ, tunc recuperaret totā terram quā ipsa Isabella tenuit nomine dotis, & tenens sine die: & sic erit placitum inter duas mulieres petentes in curia Christianitatis, ut ipsa obtineat, quæ docuerit se esse uxorem legitimam. Item de eadem materia anno septimo regis Henrici coram Martino in banco, de Gunora quæ fuit uxor Johannis filii Hugonis, quæ petiit dotem versus Matildam de Berneres tertiam partem tertiæ partis duarum carucatarum terræ cum ꝑtinentiis in Cidermerse ut dotem suam, unde prædictus Johannes eam dotavit &c. Et Matilda respondet ꝗ tenet terram illam in dotem de dono prædicti Johannis qui fuit vir suus, & non ipsius Gunoræ, & unde dicit ꝗ Galfridus filius & hæres prædicti Johannis, & qui est in custodia talis ꝑ dominum regem, est warantus suus de dote sua, & unde vocat eum ad warantum. Et Gunora dicit ꝗ non debet inde warantum habere, quia ipsa Matilda nunquā fuit sponsa prædicti Johannis, per ꝗ

Lex Kantiæ.

f. 306 b.

was objected that she ought not to have dower, because a certain Isabella Decursum was the wife of the aforesaid Thomas, and the said Thomas died seysed of her as of his wife. And after the death of the said Thomas according to the law of Kent she had more fully her dower out of the whole tenement which belonged to the said Thomas, and he seeks judgment if he ought to furnish dower to two females from one tenement and upon the death of one husband. To which the said A. answers that she was the wife of the aforesaid Thomas, and not the said Isabella; and in truth she asserts that the aforesaid Isabella was living with the aforesaid Thomas as an adulteress, and not as his legitimate wife: which matters having been stated in court, it was resolved that Alicia (if she wished) should implead Isabella, and if she could show that the said Isabella was not the wife of the said Thomas, then she should recover the whole land which the said Isabella holds in the name of dower, and the tenant is without a day. And so shall the plea be between the two women claiming in the court of Christianity, that she who has shown herself to be the legitimate wife shall prevail. Likewise concerning the same matter in the seventh year of the reign of king Henry before Martin [de Pateshull] in *banco*, concerning Gunora the wife of John Fitzhugh, who claimed as dower against Matilda de Berners the third part of the third part of two carucates of land with their appurtenances in Cidermerse as her dower, whereof the aforesaid John endowed her &c. And Matilda answered that she holds that land as dower upon the gift of the aforesaid John, who was her husband and not the husband of the said Gunora, and whereof she says that Godfrey the son and heir of the aforesaid John, and who has the custody of the said land through the lord the king, is her warrantor for her dower, and whereof she calls him as her warrantor. And Gunora says that she ought not to have a warrantor thereof, because the said Matilda was never the spouse

306 b.

idem Galfridus filius & hæres suus deberet esse warantus ipsius Matildæ de dote sua, sed dicit Gunora q̧ ipsa fuit sponsa sua, & de ea habuerit ꝓlem, scilicet quandam Julianam quæ præsens est &c. Et hoc parata est ꝓbare sicut curia consideraverit. Et Matilda e contra dicit q̧ ipsa fuit sponsa sua & non Gunora, & quòd ipsa Matilda fuit cum prædicto Johanne quando obiit, et si eadem Gunora unquam fuit cum eo, hoc fuit in adulterio, quia non fuit ei desponsata, et hoc parata est verificare &c., et ideo sine die, & Gunora habeat breve ad episcopum Wintoñ in cujus dioces. fuit desponsata. Forma brevis inferius.

2. Quod mulieri petenti dotem objectum fuit, quod alia mulier ratione ejusdem viri habuit dotem, et quod duabus mulieribus non fuit concedenda.

Eadem Gunora petiit versus custodem tertiam ꝑtem duarum partium duarum carucatarum terræ cum pertinentiis in eadem villa ut dotem suam, unde prædictus Johannes quondam vir suus eam dotavit &c. Et Petrus respondit (qui custos fuit) & dicit quòd Matilda prædicta habet inde dotem suam plenè per præceptum domini regis, et petiit judicium, si debuit duabus fœminis dotem facere. Et quia eadem Gunora petit dotem suam versus eandem Matildam, remaneat loquela sine die versus Petrum custodem, donec sciatur quid fiat inter Gunoram & Matildam. Item de eadem materia coram Martino in banco, anno regis Henrici octavo de Agnete quæ fuit uxor Roberti de Hactone, quæ petiit dotem versus Isabellam, quæ fuit uxor Aluredi de Berkings, et Isabella respondit q̧ non debuit inde dotem habere, sed bene concedit q̧ aliquando desponsata fuit eidē Roberto, sed postea ꝑ censuram ecclesiasticam partita fuit ab eo per parentelam, et facta partitione, idem Robertus postea solenniter duxit in uxorē prædictam Isabellam sine clamore vel contradictione ipsius Agnetis, et postea fuit cum prædicto Roberto viro suo

of the aforesaid John, wherefore the said Godfrey his son and heir ought to be the warrantor of the said Matilda for her dower; but Gunora says that she was his spouse and he had offspring by her, to wit, a certain Juliana who is present &c. And this she is prepared to prove as the court has resolved. And Matilda on the contrary says that she was his spouse and Gunora not, and that she Matilda was with the said John when he died, and if the said Gunora ever cohabited with him, it was in adultery, because she was not espoused to him, and this she is prepared to verify, &c., and therefore without a day, and let Gunora have a writ to the bishop of Winchester in whose diocese she was espoused. The form of the writ is below.

2. That to a woman claiming dower it was objected, that another woman in respect of the same husband has had dower, and that it is not to be allowed to two women.

The said Gunora claimed against the guardian the third part of two thirds of two carucates of land with their appurtenances in the same vill as her dower, whereof the aforesaid John her husband endowed her, &c. And Peter (who was the guardian) answered, and says that the aforesaid Matilda has thereof her dower fully, by the injunction of the lord the king, and he asks for judgment, whether he ought to assign dower to two females. And because the said Gunora claims her dower against the said Matilda, let the trial against the said guardian be suspended without a day, until it be known what is settled between Gunora and Matilda. Likewise concerning the same matter before Martin [de Pateshull] in *banco* in the eighth year of king Henry, concerning Agnes who was the wife of Robert de Hocton, who claimed dower against Isabella, who was the wife of Alured de Berkings, and Isabella answered that she ought not to have dower thereof, but she fully concedes that she was once on a time espoused to the said Robert, but afterwards on account of the censure of the church she was separated from him on account of relationship, and upon the separation having taken place, the said Robert afterwards solemnly took for wife the aforesaid Isabella without any claim or contradiction on the

usquè ad mortē Roberti viri sui, & quòd de ea obiit seysitus, ut de uxore sua, ad quod respondit prædicta Agnes, quòd nunquam partita fuit de prædicto Roberto, et si ipsa Isabella ei desponsata fuit, hoc fuit injustè, et Agnes quæsita ubi moram fecit toto tēpore Roberti, quo Isabella fuit cū eo, dicit q̧ alibi vir suus eam posuerat, et dum vir suus alibi moram fecit: postea mandatū fuit episcopo totū factū, q̧ inde veritatē inquiret, et īquisitionē mādaret justic. Forma verò brevis de facienda inquisitione talis erit.

f. 307.

3. Breve ad hoc, scilicet, de duabus mulieribus.

Rex tali episcopo salutē. Sciatis quòd cùm A. quæ fuit uxor B. in curia nostra &c. peteret dotē suā versus C. de libero tenemēto prædicti B. quondā viri sui in tali villa, D. de N., q̃ similiter dotē suā petiit versus eūdē C. sub noīe ejusdē B. objecit eidē A. q̧ nō debuit inde dotē habere quia nō fuit eidē B. (cujus nomine dotē petiit) legitimo matrimonio copulata. Sed dicebat p̃dicta D. q̧ ipsa fuit uxor legitima prædicti B. & eidē B. legitimè desponsata, et quoniā hujusmodi cognitio ad forū spectat ecclesiasticum, vobis mādamus q̧ convocatis coram vobis convocādis, rei veritatē diligenter inquiratis, et de matrimonio ita diligēter discutiatis, ut sciri possit q̃ illarū sit uxor ipsius B. legitima, et q̃ illarum preferri debeat in dotis exactione. Et inquisitionē quā inde feceritis scire faciatis eisdē justitiariis nostris p literas vestras patentes. Et facta inquisitione, mulieri cōtra quā lata fuit sētētia sup petitione illius dotis ppetuū imponatur silentiū, cùm non sit post tes-

part of the said Agnes, and afterwards she cohabited with the aforesaid Robert as her husband down to the death of the said Robert her husband, and that he died seysed of her, as of his wife, to which the aforesaid Agnes answered that she was never separated from the aforesaid Robert, and if the said Isabella was espoused to him, this was done unlawfully: and Agnes having been questioned where she was commorant during the whole time of Robert, whilst Isabella was with him, she says that her husband had placed her elsewhere, and whilst her husband was commorant elsewhere: afterwards the whole of the facts were committed to the bishop, that he should inquire into the truth thereof, and send his inquest to the justiciaries. The form of the writ for making the inquest will be of this nature. f. 307.

3. Writ for this, to wit, concerning two wives.

The king to bishop so-and-so greeting. Know ye that when A. who was the wife of B. in our court &c. claimed her dower against C. from a free tenement of the aforesaid B. formerly her husband in such a vill, D. of N. who in like manner claimed her dower against the said C. under the name of the said B. objected to the said A. that she ought not have dower therefrom because she was not coupled in legitimate matrimony to the said B. in whose name she claims dower. But the aforesaid D. alleged that she was the legitimate wife of the aforesaid B., and was legitimately espoused to the said B., and since cognisance of this cause belongs to the ecclesiastical court, we command you that, having called before you those who ought to be so called, you diligently inquire into the truth of the matter, and you discuss so diligently the fact of the marriage, that it may be known which of them is the legitimate wife of the said B., and which of them ought to be preferred in the exaction of dower, and make ye known to our said justiciaries the inquest which you have held thereon by your letters patent. And after the inquest has been made let perpetual silence be imposed upon the woman, against whom sentence has been given upon the claim for that dower, since there is not

talē inquisitionē in foro ecclesiastico locus appellationi. Cùm autem justitiariis ad inquisitionem episcopi de veritate cōstiterit, resūmoneatur tenens q̧ sit ad certū diē eidem A. in petitione dotis responsurus. Quia cùm contentio sit inter mulieres q̃ sit uxor legitima, discusso inter eas quæ sit legitima, extunc ꝑcedat actio inter mulierē petentē & tenentem q̃ mulier nihil habuerit, quia tunc primò ꝑsonam habet standi in judicio. Et hoc secundū quosdam, sed secūdū alios, quicunq̧ exceptionem apposuerit, ipsa q̃ se legitimam ꝓbaverit sine ulteriori dilatione obtinebit. Qualiter eñ ꝑcedendum sit ad hujusmodi inquisitionem faciendam ad considerationem episcopi Wigorñ de consilio Martini ex parte regis tale datum fuit responsum.

4. Consulti fuerunt justiciarii, qualiter procedendum esset in tali inquisitione facienda. Consuetudo Angliæ. Britton, v. ch. viii. § 4.

Rex tali episcopo salutem. Cùm inter A. petentem [1] & B. tenentē corā justic. nostris de banco contentio dotis verteretur, & post multas altercationes ipsius[2] ex ꝑte ipsius B. eidem A. objiceretur, quòd tali viro (cujus nomine dotē petiit) non fuisset legitimo matrimonio copulata. Et tandem ad episcopum Wigorñ (in cujus dioces. dicebatur matrimoniū inter tales fuisse contractum) esset demādata inquisitio facienda. Idem episcopus nos postmodum consuluit qualiter in dicta inquisitione facienda esset ꝑcedendum: cujus cōsultationi secundū consuetudinē regni Angliæ sic duximus respondendū, q̧ cum sic fuerit ei inquisitio demādata, q̧ convocatis convocādis, &c. ut supra, sic ꝑcedat, quòd inprimis denūciare faciat tenenti q̧ sit ad certū diem certo loco contra matrimoniū dictura, si voluerit. Et

[1] "mulierem petentem," MS. Reg. 9 E. xv.

[2] "ipsius A." MS. idem.

place for an appeal after an inquest through witnesses in the ecclesiastical court. But when the justiciaries have been certified after the inquest of the bishop concerning the truth, let the tenant be re-summoned that he be present on a certain day in order to answer to the said A. on the claim for dower. Because since there is a contention between the women which is the legitimate wife, after it has been discussed between them, which is the legitimate wife, thereupon let the action proceed between the woman claimant and the tenant; on the ground that she has had nothing, because then for the first time she has a *persona standi* in court. And this is according to some persons, but according to others, whoever has presented an exception, the woman who has proved herself to be legitimate, shall obtain [her dower] without further proof. For how proceedings are to be had to make such an inquest upon the consultation of the bishop of Worcester such an answer was given on the part of the king by the advice of Martin [de Patishull].

4. The justiciaries were consulted in what way proceedings should be had in making such an inquest.

The king to bishop so-and-so greeting. Since a contention for dower has been raised between A. the claimant and B. the tenant before our justiciaries in *banco*, and after much altercation on the part of B. it was objected to A., that she has not been coupled in legitimate matrimony to such a man, in whose name she claims dower: and at length it has been committed to the bishop of Worcester, in whose diocese the marriage is said to have been contracted between them, to make an inquest. The said bishop afterwards consulted us in what way proceedings should be taken in making the said inquest, to whose consultation according to the custom of the realm of England we have thought it right that answer should be made in this manner, that since the inquest has been committed to him, having called together those who ought to be called together &c. as above he should proceed thus, that in the first place he should give notice to the tenant that she be present on a certain day in order to allege against the said marriage, if she wishes,

sive tunc venerit sive non, testes quos mulier (quæ voluerit matrimoniū ꝓbare) ꝓduxerit, admittat ob contumaciā mulieris alterius q̃ non venerit. Et veritate absq, juris magna solennitate quasi sūmatim inquisita, mandatur inquisitio dño regi, & non obstante aliqua appellatione à ꝑte adversa interposita (si forte ꝑ̃sens fuerit), quia si aliqua ꝑte in hoc casu audiretur appellās, et dilatū esset appellationi, sic nūquā causa finē caperet, et posset negotiū ꝓtrahi in infinitū, nec debet aliqua partiū ꝑ appellationem ad alios judices recurrere, et maximè extra regnum ad papam, vel ad alios, ne sic cognoscerent de layco feodo.

f. 307 b.

Cap. XII.

1. Exceptio contra mulierem, si aliquando contra mulierem petentem dotem fuerit sententiatum causa matrimonii.

Obstabit etiam exceptio mulieri dotem petenti, si aliquando illū, cujus nomine dotē petiit, petiit in virū dum vixit & matrimonium legitimum accusavit, & contra ipsam tunc fuerit sententiatū, ut si mulier dicat q dotem petere non possit, eo q cùm talem in virum peteret in curia Christianitatis coram talibus judicibus & contra ipsum judicatum esset, responderi posset ex adverso quòd talis vir à tali sententia appellavit ad alios judices, & ita quòd prima sententia revocata esset quasi nulla, & per hoc stetit ipsa cum viro suo usque ad mortem, & seysitus fuit de ea sicut de uxore sua. Et hoc probato mulier petens nihil recuperabit, nisi ostendere posset quòd in causa appellationis nihil actum fuerit, vel appellatio non prosecuta, & sententiatum pro appellante, sententia tamen in causa appellationis fuit ab aliis judicibus revocata,

Britton, v. ch. viii. § 2.

and whether he then come or not, he shall admit the witnesses whom the woman (if she wishes to prove her marriage) has produced in pain of the contumacy of the other woman who has not come. And the truth having been inquired into as it were summarily without any great solemnity of law, the inquest is sent to the lord the king, and notwithstanding any appeal having been interposed by the adverse party (if she has by chance been present), because if an appellant were heard on either part in this case and it was deferred to the appeal, so the cause would never find an end, and the business might be protracted to infinity, nor ought either of the parties to have recourse by appeal to other judges, and chiefly out of the kingdom to the pope, or to others, lest they should thereby take cognisance concerning a lay feud.

Chapter XII.

f. 307 b.

1. An exception against the woman, if ever a sentence in a cause of matrimony has been given against the woman claiming dower.

An exception will also be an obstacle to the woman claiming dower, if at any time she has claimed whilst he was alive as her husband him, in whose name she claims dower, and she alleged a legitimate marriage, and sentence was then given against her, as if the woman should say that she cannot claim dower, inasmuch as when she claimed such an one for her husband in the court of Christianity before such judges, and it was adjudged against him, it might be answered on the other side, that the said man appealed such a sentence to other judges, and so that the first sentence was revoked as null, and through that means she stayed with her husband down to his death, and he was seysed of her as of his wife. And upon this having been proved the woman claiming shall recover nothing, unless she can show that nothing was done in the cause of appeal, or the appeal was not prosecuted, and sentence was given for the appellant, the sentence however in the cause of appeal was revoked by

& si mulier de hoc in curia regia probationē habuerit, pro ea judicabitur, vel propter difficultatem discussionis transmittatur inquisitio ad curiam Christianitatis.

2. Competit exceptio contra mulierem ex taciturnitate.

Poterit etiam exceptio dari mulieri tenenti vel hæredi ex taciturnitate mulieris petentis, ut si mulier cùm præsens fuerit in ecclesia, vel alibi, ubi ignorare non possit, cùm bannum & tertia denuntiatio fiat ante desponsationem, tunc tacuerit, licet re vera desponsata sit, præjudicabitur ei, si talem in virum petierit, quia si in virum petendo tenere non possit, multo fortius nec in dote, quasi nullo matrimonio.

Britton, *ib.* § 3.

3. Si duæ mulieres dotem petant, non multum refert de prioritate.

Si autem duæ dotem petierint, non multum refert de prioritate impetrationis, sed tamen restat videre quæ illarum actrix dici debeat versus aliam. Et secundum quod actrix dici poterit illa quæ prius ad judicium ꝓvocavit, i. illa quæ prius usa fuerit, licet non prius impetraverit, nisi alia forte excipiendo actrix efficiatur, quia sicut ille qui dicit, tenetur probare actionem, ita ille qui excipit, exceptionem, sive affirmando sive negando, dum tamen negativa habeat in se affirmativam implicitam, & qui excipit quodammodo actor dicitur. Et de hac materia inveniri poterit de itinere abbatis de Rading & M. de P. in com̃ Gloc. anno regis Henrici quinto, de Clementia de Dodewell. Et cùm transmissæ fuerint ad curiam Christianitatis, tenens semper teneat in pace, donec constiterit de illegitimitate illarum, quæ illarum legitima fuerit, & quæ non. Et utraque teneatur ad probationem. Et cum pervenia-

other judges, and if the woman has brought forward proof of this in the court of the king, judgment shall be given for her, or on account of this difficulty of the discussion let the inquest be transmitted to the court of Christianity.

2. An exception may be made against a woman for her taciturnity.

An exception also may be allowed to a woman tenant or to an heir on the ground of the taciturnity of the woman claimant, as if, when the woman was present in the church or elsewhere, where she could not be ignorant, when the banns and the third notice were given before the espousals, she was then silent, although she has been in truth espoused by him, it will be prejudged against her, if she claim such person as her husband, because if she cannot succeed in claiming her husband, much more will she not do so in claiming dower, as if there was no marriage.

3. If two women claim dower, it does not much matter as to priority.

But if two women claim dower, it does not much matter as to the priority of suing out a writ, but it is to be seen which of them ought to be the party proceeding against the other. And according as she may be called the plaintiff, who has first applied for judgment, that is, she who has first used a writ, although she has not been the first to sue it out, unless the other by excepting has become the plaintiff, because as he who alleges is bound to prove his action, so he who excepts is bound to prove his exception, whether by affirming or by denying, provided however the negative has in itself an implied affirmative, and he who excepts is in a certain manner called the plaintiff. And on this matter something may be found in the iter of the abbot of Reading and Martin de Pateshull in the county of Gloucester in the fifth year of king Henry, concerning Clementia de Dodewell. And when they have been transmitted to the court of Christianity, let the tenant always hold in peace, until it has been established concerning their illegitimacy, which of them is the legitimate wife, and which not. And let each be held to the proof. And when the proceeding

tur ad probationem, una earum, licet re vera legitima sit, tamen deficere potest in probatione, cùm probatio deficere possit, licet jus non deficiat, ut si quis primò unam desponsaverit in Francia vel in Terra Sancta, vel alibi extra regnum, & postea aliam de facto in Anglia, ipsa quæ est in Anglia obtinebit propter defectum alterius, quæ probare non poterit. Item si quis in regno uxorem quandam duxerit de jure, & aliam de facto cum qua steterit, & legitima cum in regno fuerit matrimonium non accusaverit petendo talem in virum, præjudicabitur ei imperpetuum, si post mortem viri sui dotem petierit, & ipsa quæ in possessione viri sui mortis tempore fuerit obtinebit.

Britton, *ib.* § 4.

f. 308.

4. De duabus mulieribus dotem petentibus ratione unius viri, quæ illarum in possessione fuerit tempore mortis obtinebit.

Sed esto quòd talem in virum petierit, cùm illegitima fuerit in possessione. Si mulier petens in vita viri moriatur, illa quæ in possessione fuerit obtinebit. Si autem vir antequàm disrationetur moriatur, per accusationem matrimonii ꝑpetuatur sua actio, quantū ad dotem obtinendam, maximè cùm pueri sui fuerint legitimi, & obtinuerit[1] in successione hæreditatis. Et eodem modo etiā si matrimoniū nō fuerit in vita viri accusatum, quia si pueri sui hæreditatē acquisierint, ipsa per hoc dotem obtinebit. Itē si cùm matrimoniū accusaverit, & postmodū per sentētiā obtinuerit, & à sentētia per virum fuerit appellatum, & pendente causa appellationis moriatur vir, extinguitur sua actio quantum ad virum petendum, sed si hæredes hæreditatē obtinuerint, & ipsa per hoc dotem obtinebit, ut supra. Si autem in causa appellationis sententia tum sit pro appellante, & ipsa petens à tali sententia appellave-

[1] "obtinuerint," MS. Rawl. C. 160.

has arrived at the proof, one of them, although she may be in reality the legitimate wife, may fail in her proof since the proof may be wanting, although the right may not be wanting, as if a person has espoused one of them in France or in the Holy Land, or elsewhere out of the kingdom, and afterwards the other in fact in England, she who is in England will prevail on account of the failure of the other who cannot prove. Likewise if any person has taken a wife within the kingdom rightfully, and another in fact, with whom he has stayed, and the legitimate wife when she was in the kingdom did not impeach the second marriage by claiming such person for her husband, it will be prejudged against her for ever, if after the death of her husband she has claimed dower, and she who was in possession of her husband at the time of his death shall prevail.

f. 308.

4. Of two women claiming dower in respect of one man, she, who was in possession of him at the time of his death, shall prevail.

But let it be that she has claimed such a person for her husband, when the illegitimate wife was in possession of him. If the woman claiming should die in the lifetime of her husband, she who was in possession of him shall prevail. But if the man dies before he be re- recovered by deraignment, her action is perpetuated by her impeachment of the marriage as respects the obtaining of dower, more especially when her sons are legitimate and she has prevailed in the succession to the inheritance. And in the same manner if the marriage has not been impeached in the lifetime of her husband, because if her sons have obtained the inheritance, she will thereby obtain dower. Likewise if when the marriage has been impeached, and she has afterwards prevailed by a sentence, and her husband has appealed from the sentence, and pending the cause of the appeal the husband dies, her action is extinguished as regards the claim for a husband, but if her heirs have obtained the inheritance, she also shall thereby obtain dower as above. But if in the cause of the appeal sentence has been given for the appellant, and the claimant has appealed

rit, vel ad primos, & ipse antequam discussum fuerit in appellatione mulieris moriatur, cadit actio versus virum, sed per hæredes dotē obtinebit vel non, ut supra.[1] Si autē à sententia appellationis appellaverit, nunquā dotem obtinebit, nisi in causa successionis hæredes obtinuerint. Si autem ꝑ muliere judicatum fuerit, nec à viro appellatum, sed cùm illam recipere recusaverit post sententiam, nolens parere sententiæ moriatur, hoc mulieri sufficiat ad dotem obtinendam, si hæredes sui postmodum legitimi censeantur, sed tamen petitio dotis semper remanebit in suspenso, donec constiterit de hæredum legitimitate.

Cap. XIII.

1. Item competit exceptio ex eo quod dicitur mulier petit, responderi f. 308 b. poterit, quod vir suus die quo eam desponsavit nec postea aliquid juris habuit in terra illa, per quod dotare posset.

Dicitur etiam in brevi, talis petit versus talem tantam terram ut dotem. De hoc quod dicit (petit) habet tenens exceptionem, quòd petere non potest tali ratione, quia vir suus nihil juris habuit in terra illa, quia terra illa fuit jus alterius, s. primæ uxoris suæ, sicut hæreditas vel maritagiū suum, q quidem si mulier petens dedicere non possit, amittet dotem: si autē replicaverit in contrarium, hoc ꝑ inquisitionem declarabitur. Item quia dotem suam remisit & quietam clamavit, quo ꝑbato cadit actio sua, nisi replicare possit quòd hoc fuit per virum suum, cui in vita sua contradicere non potuit, vel coacta à quocunque per vim aut metum, & hoc per inquisitionem terminari possit. Item quòd villana est et eodē modo fiat ut supra, vel q docere possit contrarium, & quòd maritata fuerit libero, & libero thoro, & in libero feodo dotata, & hoc

[1] "vel non, ut supra" down to "nunquam dotem obtinebit," omitted in MS. Rawl. C. 160.

from such sentence to the highest quarter, and the man before a discussion has taken place on the appeal of the woman dies, the action against the man falls to the ground, but she shall obtain dower through her heirs or not, as above. But if she has appealed from the sentence of appeal, she shall never obtain dower, unless her heirs have prevailed in a cause of succession. But if judgment has been given for the woman, and no appeal has been made by the man, but when he has refused to receive her after the sentence, he should die being unwilling to obey the sentence, let this suffice for the woman to obtain dower, if her heirs have afterwards been accounted legitimate, but nevertheless the petition for dower shall always remain in suspense, until the legitimacy of her heirs has been ascertained.

CHAPTER XIII.

1. Likewise an exception may be raised upon the words that "a woman claims," it may be answered that her claim is null, because her husband neither on the day when he espoused her nor afterwards had any right in that land, whereby he could endow her.

f. 308 b.

It is also said in the writ, such a woman claims against such a person so much land as dower. Upon this which it says "claims" the tenant has an exception, that she cannot claim for such a reason, because her husband had no right in that land, because that land was the land of another person, to wit, his first wife, as her heritage or marriage portion, which if the woman cannot gainsay, she will lose her dower: but if she has replied to the contrary, this shall be declared by an inquest. Likewise because she has surrendered and quit-claimed her dower, upon proof of which her action falls to the ground, unless she should reply that this was done through her husband, whom she could not contradict in his lifetime, or constrained by some one through force or fear, and this may be determined by an inquest. Likewise because she is a villein, and let it be done in the same way as above, unless she can prove the contrary, and that she was married to a free husband and in a free bed and was

similiter per inquisitionem terminabitur. Item quòd ei satisfactum fuit, per quod tenuit se contētam, quo ꝑbato cadat à causa sua. Item quia machinata fuit in mortem viri sui, vel quia tale quid fecit ad exhæredationem hæredis versus quē petit. Item quòd petere non potest ꝑpter consuetudinē civitatum. Item quòd vir suus amisit per juditium, & tenens recuperavit ut jus suum, vel ut villenagium suum. Item quia vir suus feloniam fecit pro qua suspensus fuit, vel utlagatus. Item quia terra illa nunquam accidit viro suo in vita sua ita quòd eam dotare non posset.[1] Item quia tenens aliàs recessit quietus versus eam in eodem placito per judicium vel alio modo coram tali justitiario: quæ quidem si dedicere nō possit, cadit à causa nisi replicare possit & ad exceptionem respondere. Ad hoc autem q̧ dicit, quòd fuit terra primæ uxoris suæ, replicare poterit uxor quòd non uxoris suæ, sed ꝑprium tenementum ex causa successionis vel alia quacunque, q̧ quidem terminari poterit per inquisitionem. Item ad hoc quod dicit quòd satisfactum est ei, tunc refert qualiter, vel per escambium alterius terræ, vel per aliquam summā pecuniæ, vel alio modo. Et si replicaverit, quòd nunquā fuit ei de conventione satisfactum, adhuc dotem amittet, et agat de conventione. Item ad hoc quod dicit, quòd machinata fuit in mortem viri sui, ad hoc replicare poterit, quòd cùm aliàs de hoc accusata fuerit, petens quieta per judicium recessit de hujusmodi. Item ad hoc quod dicit q̧ ad exhæreditationem hæredis fecit, replicare poterit, quòd hoc fecit ad cōmodum suū, quod ꝑbari poterit ꝑ inquisitionem.

Britton, v. ch. x. § 3.

[1] " dotare posset." MS. Reg. 9 Ed. xv.

endowed in a free feud, and this shall be determined in a similar manner by an inquest. Likewise that satisfaction has been made to her wherewith she held herself out to be content, upon proof whereof she must fail in her cause. Likewise that she had been instrumental to the death of her husband, or that she had done something towards disinheriting the heir against whom she claims. Likewise that she cannot claim on account of the custom of cities. Likewise that her husband lost it through a judgment, and the tenant recovered it as his right, or as his villenage. Likewise because her husband committed a felony, wherefore he was hung or outlawed. Likewise because that land never accrued to her husband during his lifetime, so that he could not endow her. Likewise because the tenant at another time left the court acquitted towards her on the same plea through a judgment or in some other manner before a certain justiciary; which if she cannot gainsay, she is cast from her suit, unless she can reply and make answer to the exception. But upon this that he says that it was the land of his first wife, the wife may reply that it was not the land of his first wife, but his own tenement acquired by succession, or in some other way, which may be determined by an inquest. Likewise upon this that he says that satisfaction has been made to her, then it is of importance in what manner, either by an exchange of other land, or by a sum of money, or in some other way. And if she should reply that the agreement made with her has never been satisfied, she shall still lose her dower, and let the proceedings be upon the agreement. Likewise upon this that he says that she plotted the death of her husband, she may reply to this, that when she was at another time accused of this, the claimant left the court acquitted on this head by a judgment. Likewise upon this that he says that she did something towards disinheriting the heir, she may reply that she did this for his advantage, which may be proved by an inquest. Like-

Item de hoc quod dicit de consuetudine civitatū, replicare poterit q̧ alia est consuetudo quàm ipsa proponit, scilicet talis vel talis, et ideo de brevi dotis q̧ dirigi debet ad ballivos civitatis aliquid tangendū est, & q̃ sit diversa consuetudo civitatum, et breve tale est de justitiando deforciantem.

2. Cum contra mulierem proponatur exceptio de consuetudine civitatis vel burgi, tunc fiat breve ballivis civitatis.

Rex vic. Londō, vel majori alicujus civitatis salutē. Præcipimus vobis, quòd justicies A. q̧ justè & sine dilatione & secundū consuetudinē civitatis nostræ Londoñ (vel Eborū) reddat B. q̃ fuit uxor C. rationabilē dotē suā, quę eam cōtingit de libero tenemēto q̧ fuit ipsius C. quondā viri sui in Lōdoñ (vel in alia tali civitate, vel in suburbio Lōdoñ) et unde nihil habet ut dicit, et unde queritur q̧ p̃dictus A. ei deforciat, ne amplius inde clamorē audiamus ꝑ defectu justitiæ. Et tunc ꝓcedat loquela in curia civium secundū eorū cōsuetudinē. Et q̧ in dotis petitione tenēda sit cōsuetudo, ꝓbatur anno regis H. ii. corā Martino in bāco, de Isabella de Gravenel q̃ petiit dotē versus Thomā de Wederhal, quæ dotē petiit de morte Walteri viri sui: qui respondit: q̧ dotē habere non potuit nec debuit, quia ipsa post mortē prædicti Walteri (cujus nomine dotē clamat) cepit alium virum, & consuetudo est in partibus illis q̧ uxores maritorū defunctorū habeant francū bancū suum de terris sockmannorū, & teneant nomine dotis ad vitā suam: sed si post mortē virorum suorū nupserint alicui, consuetudo est in coñ illo q̧ dotes amittant quas habuerūt nomine primi viri. Ad q̧ respondit Isabella q̧ nunquā fuit in seysina illo[1] non magis tēpore primi viri quā secūdi, secundi viri

f. 309.

Consuetudo London.

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[1] "illa," MS. Rawl. C. 160.

wise upon this that she speaks of the custom of cities, it may be replied that the custom is different from what she propounds, to wit such or such, and therefore we must touch somewhat upon the writ of dower which ought to be directed to the bailiffs of a city, and because the custom of cities is diverse, and the writ for bringing to justice a deforcer is of this wise.

2. When an exception is propounded against a woman concerning the custom of a city or borough, then let a writ go to the bailiffs of the city.

The king to the viscount of London, or to the mayor of any other city greeting. We enjoin you that you bring to justice A. that he may justly and without delay, and according to the custom of our city of London (or York), restore to B., who was the wife of C., her reasonable dower, which appertains to her from the free tenement which belonged to the said C., formerly her husband, in London (or in such other city, or in the suburb of London), and whereof she has nothing as she says, and whereof she complains that the said A. deforces her, that we may hear no further complaint thereon from failure of justice. And then let the suit proceed in the court of the citizens according to their custom. And that in a petition for dower the custom is to be maintained, is proved in the second year of King Henry before Martin in the Bench, concerning Isabella de Gravenel, who claimed dower against Thomas de Wederhal, who claimed dower upon the death of Walter her husband: who answered that she could not have nor ought she to have dower, because after the death of the aforesaid Walter (in whose name she claims dower) she took another husband, and the custom is in those parts that the wives of deceased husbands have their free-bench of the lands of sock-men, and hold it in the name of dower for their life, but if after the death of their husbands they marry any one, the custom is in that county that they lose the dowers which they had in the name of the first husband. To which Isabella answered that she was never in seysine of it no more in the time of her first husband than in that of her second one, nor in the time of her second

f. 309.

quā primi, & unde petit judiciū si possit amittere illud q nunquā habuit. Et ad q responsum fuit & testatum, q sive in seysina fuerit sive non, si post mortē viri sui alium capiat, q amittere debet dotem, si in seysina fuerit: si autē extra seysinam, debet amittere clameum. Et fiat inquisitio in com̄, si talis sit cōsuetudo vel non. Est enim talis cōsuetudo in civitate Lyncolñ: q si vir vendiderit hæreditatē suā p necessitate sua, uxor dotem inde habere non debet, ut de ultimo itinere M. de P. in com̄ Lync. Si autē invadiaverit vel ad terminum posuerit, dotē habebit, & de omnibus terris & aliis unde vir suus seysitus obiit ut de feodo. Et ita evenit inter Basiliā quæ fuit uxor Henrici filii Wareni petentis, & Basiliā uxorē Michaelis de Mūtpellers. Et ad hoc facit q habetis eodē itinere, de Roberto de Arundel & Katharina uxore ejus, & magistrum Robertū de Craveleghe. Item est consuetudo Lyncolniæ, quòd nulla mulier post mortē viri sui infra civitatem Lincolñ dotē petere poterit, nisi tantummodo de tenemētis de quibus vir seysitus fuerit ut de feodo die quo obiit. Itē cons. est in com̄ Eborū, quòd mulier infra annum à die mortis viri sui petere debet dotē suam, alioquin post modū non audiretur, ut de quadā Helena quæ fuit uxor Wilhelmi de Hastone & Hugonis de Seleby.

Consuetudo Lyncoln.

Consuetudo Ebor.

Continetur etiam in brevi: talis mulier petit versus talē. Ad q respondere poterit ille qui vocatus est in judiciū, quòd inde nihil tenet nec unquam aliquid inde tenuit, & poterit veritas per patriam declarari. Item cognoscere poterit quod tenet, sed non nomine pprio sed alieno, ita quòd nihil de terra illa lucrari potest nec perdere: quia non tenet aliam nisi ad ter-

3. Si summonitus ad respondendum in placito dotis excipiat quod nihil teneat, vel ad terminum vel in villenagio, vocetur warrantus.

husband any more than in the time of her first husband, and thereon she asks for a judgment if she can lose that which she never had. To which it was answered and attested that whether she may have been in seysine or not, if after the death of her first husband, she takes another, that she ought to lose her dower, if she has been in seysine of it; and if she has been out of seysine, she ought to lose her claim. And let there be an inquest in the county, if such a custom exists or not. For there is a custom of this kind in the city of Lincoln, that if a husband sells his inheritance from his necessity, his wife ought not to have dower thereof, as in the last iter of Martin de Pateshull in the county of Lincoln. But if he shall have pledged it or leased it for a term, she shall have dower both of all his lands and other things whereof her husband died seysed as in fee. And so it happened between Basilia who was the wife of Henry FitzWarren the plaintiff, and Basilia the wife of Michael de Montpelier. And on this bears what you find in the same iter concerning Robert de Arundel and Catharine his wife, and Master Robert de Craveleghe. Likewise there is a custom at Lincoln, that no wife after the death of her husband can claim dower within the city of Lincoln, except only of the tenements of which her husband was seysed as in fee on the day of his death. Likewise it is the custom in the county of York, that a woman ought to claim her dower within one year after her husband's death, otherwise after that time she shall not be heard, as concerning a certain Helena who was the wife of William de Hastone, and Hugh de Seleby.

3. If the person summoned to answer in a plea of dower excepts that he holds nothing or only for a term or in villenage.

For it is contained in the writ, such a woman claims against such a person. To which he who is summoned to judgment may answer, that he holds nothing thereof, nor ever held anything thereof, and the truth may be declared by the country. Likewise he may acknowledge that he holds, but not in his own name, but in another's name, so that he cannot either gain or lose anything of that land, because he does not hold it other than for a

Britton, v. ch. x. § 13.

minū annorū, vel nisi ad voluntatem talis, vel in villenagio, quo casu cadit breve, & impetretur super eos, quorum nomine fuerit in possessione. Si autē tenuerit ad vitam vel p legē Angliæ, vel donec pvisum fuerit, vel hujusmodi, quòd liberum habeat tenemētum, non cadit breve, sed vocare debet warantū sicut in aliis casibus ut supra.

4. Exceptio contra mulierem, si petat medietatem de feodo militari, et quod non nisi de tertia.

Item si petat versus talem tantam terram cum pertinentiis, sicut medietatem tantæ terræ, vel tertiam partem, ut si medietatem, excipere poterit tenens quòd aliter dotata fuerit ad ostium ecclesiæ, scilicet de tertia parte, quia tenementum de quo dotem petit est feodum militare. Ad quod poterit mulier asserere contrarium si voluerit, ut fiat inquisitio de modo constitutionis. Item si petat tertiam partem, excipi poterit q de minori pte dotata fuit, & tenuit se inde contentā, & hoc similit declarandū est per inquisitionē & p patriā. Itē in tali villa, tūc fiat ut supra, si erratū fuerit in noībus villarum.

5. f. 309 b. Exceptio quod vir suus nunquam fuit inde feoffatus, quod inde eam posset dotare.

Item, & unde vir suus eam dotavit de quo eam desponsavit, & qui illā inde dotare potuit. Ad quod excipere poterit tenens contra mulierem, q talis quondam vir suus nunquàm fuit inde seysitus aliquo modo. Item q nunquam fuit ita seysitus q eam dotare posset, quia non nisi ad voluntatē talis, vel ut de vadio, vel in custodia, vel ad terminum annorum, & sic nomine alieno. Item si nomine pprio, non nisi ad terminum vitæ quacunq; ratione, ut de libero tenemento, & non in feodo. Item si in feodo, non tamē ita in feodo q eam dotare posset, quia de jure alieno, & ita q vir suus terram illā versus eum amisit per judicium. Item non nisi p disseysinam vel intrusionem, & unde vir

term of years, or at the will of a given person, or in villenage, in which case the writ abates, and let it be sued out against those in whose name he has been in possession. But if he has held it for life, or by the law of England, or until it has been provided, or such like, that he should have a free tenement, the writ does not abate, but he ought to call a warrantor as in other cases as stated above.

let a warrantor be called.

4. An exception against a woman, if she claims a moiety of a military fee, and that she can only claim one third.

Likewise if she claims so much land with its appurtances, as a moiety of so much land, or a third part, as if a moiety, the tenant may except that she was otherwise endowed at the door of the church, to wit, with a third part, because the tenement from which she claims dower is a military fief. To which the woman, if she pleases, may assert the contrary, so that an inquest should be held concerning the mode of appointment. Likewise if she claims a third part, it may be excepted that she was endowed with a smaller portion, and she kept herself content therewith, and this is to be declared in like manner by an inquest and by the country. Likewise in such a vill, then let it be done as above said, if there has been an error in the names of the vills.

5. f. 309 b. An exception that her husband was never enfeoffed thereof, so that he could endow her therewith.

Likewise, and wherewith her husband endowed her at the time when he espoused her, and who was able to endow her therewith. To which the tenant may except against the woman, that so-and-so her husband was never seysed of it in any manner. Likewise that he was never so seysed of it, that he could endow her, because he held it only at the will of so-and-so, or as a pledge, or in guardianship, or for a term of years, and so in another's name. Likewise if in his own name, only for a term of years in some manner or other, as in freehold, but not as in fee. Likewise if in fee, not however so in fee that he could endow her, because in another's right, and so that her husband lost that land to another by a judgment. Likewise [that he held it] only by disseysine or by intrusion, and there are infinite cases of this kind,

suus terrā illam amisit per intrusionē vel per assisam, & infiniti sunt casus de hujusmodi, de quibus similiter petens dicat cōtrarium, si uterq; se inde posuerit super patriam, fiat inquisitio per hoc breve.

6. Breve ad hoc, quod inde nunquam fuit seysitus quod, &c.

Rex vicecomiti salutē. Præcipimus tibi, quòd venire facias coram te, & coram custodibus placitorum coronæ nostræ in pleno com̃ tuo xii. tam liberos quàm legales homines de visneto tali, per quos rei veritas melius sciri poterit, & p eorum sacramentum diligenter inquiras, si B. quondā vir A. die quo eandem A. desponsavit, vel unquā postea, fuit seisitus in dominico suo ut de feodo de tāto terræ cum ptinentiis in tali villa, ita q predictam A. inde dotare posset vel non, quia tam p̃dicta A. quàm C. de N. versus quā prædicta A. petit tertiā ptem in dote, posuerunt se inde in juratam illam, & inquisitionē quam inde feceris &c. ut supra. Et observetur ordo inquisitionum ut supra, secundū quod fieri debeat, vel coram justic. vel in com̃, & multæ possunt esse causæ quare illam inde dotare non potuit, ut si forte nunquam fuit in seysina inde, vel forte fuit in seysina, sed illam dedit alicui antequā uxorem suam desponsasset, vel forte non tenuit illam nisi ad vitam suam tantum, vel ad terminum sicut rem alienam, vel in custodia cum aliquo qui fuerit infra ætatē, vel sicut maritagium vel hæreditatem primæ uxoris suæ, vel in villenagio sicut villanus, in quibus casibus nullus uxorē suam dotare poterit in tali seysina constitutus, unde generalis potest fieri cōstitutio secundum formā prædictam, quæ se habet ad omnes istas species, si quis in narratione sua ad aliquam istarum specierum descēdat.

7. Exceptio, si tenuit in

Sed si quis in narratione sua ad aliquā istarū specierū descēdat, ut si dicat & exprimat causam suam

concerning which in like manner the claimant may assert the contrary; if each of them has thereupon put himself upon the country, let an inquest be held through this writ.

6. A writ, that he never was seysed thereof, &c.

The king to the viscount greeting. We enjoin thee, that thou cause to come before thee and before the keepers of the pleas of our crown in thy full county court twelve free and loyal men of such a neighbourhood, through whom the truth of the matter can be better known, and through their oaths inquire diligently, if B. formerly the husband of A. on the day on which he espoused the said A. or at any time afterwards was seysed in his demesne as of fee of so much land with its appurtenances in such a vill, so that he could endow the aforesaid A. therefrom, or not, because the aforesaid A. as well as C. de N. against whom the aforesaid A. claims the third part in dower, have put themselves on that jury and inquest, which thou will have made thereuopn &c. as above. And let the order of the inquests be observed as above, according to what ought to be done, either before the justiciaries, or in the county court, and there may be many causes wherefore he could not endow her therefrom, as for instance if he was never in seysine thereof, or by chance he was in seysine but he gave it to some one before he espoused his wife, or perhaps he did not hold it except for his life only, or for a term, as another person's property, or in guardianship conjointly with one who was under age, or as the maritage or inheritance of his first wife, or in villenage as a villein, in which cases no one can endow his wife whilst established in such seysine, whence a general statute may be made according to the aforesaid form, which applies to all those species, if any one in his declaration rests himself upon any one of those species.

7. An exception, if he

If any one in his declaration rests himself upon any one of these species, as if he says and expresses his cause

villenagio, vel hoc fuit jus alterius uxoris, vel nisi ad terminum annorum, vel ad vitam vel hujusmodi.

quare talē uxorem suam dotare non potuit, ut si tenuit in villenagio, vel ut maritagiū, vel de hæreditate primæ uxoris suæ, vel in custodia, vel alio modo (secundū q prædictum est), tunc in forma inquisitionis fiat mentio de specialitate hoc modo, scilicet: ad recognoscendū sup sacramentū suum si B. quondā vir A. eodē die quo eamdē A. desponsavit, vel unquā postea, fuit seysitus in dominico suo ut de feodo de tanto terræ cū ptinentiis in tali villa, ita quòd eam inde dotare potuit, vel si pdictus B. antequā eādem A. desponsasset dedit terrā illā C. de N. & chartā suam ei inde fecit vel sic: si B. quondā vir A. die quo eandē A. desponsavit tenuit ita liberè & in feodo tantam terram &c. ita quòd eandem A. inde dotare posset sicut ipsa dicit, vel si terram illam tenuit in villenagio et ut villanus, sicut C. versus quem prædicta A. clamat tertiā ptem in dotē, dicit: vel aliter: utrū illā tenuit ut jus suum & in feodo &c. vel si illā tenuit in custodia, vel ut jus primæ uxoris suæ, vel ad terminum annorum, vel ad terminū vitæ suæ tantum: quia tam prædictus B. quàm prædicta A. posuerunt se inde in juratā illā, & interim terram illam videāt, & unde ita interim se certificent, q præfatos justiciarios nostros &c. ad pfatum diem plenius inde certificare possint (si milites juratores venire debēt corā rege). Si autē fieri debeant coram vic. & coronatoribus, tunc sic. Et inquisitionē quā inde feceris scire facias justiciariis nostris tali die p literas vestras sigillatas sigillo tuo et sigillis pdictorū juratorū, et p duos ex illis p quorū sacramētum inquisitionē illā feceris. Et infiniti sunt casus, qui redigi possunt in inquisitionē istā.

f. 310.
Britton, v. ch. x. § 13.

wherefore he cannot endow his wife, as if he held his land in villenage, or as a maritage, or as the inheritance of his first wife, or in guardianship or in any other manner (according to what has been said above), then in the form of the inquest let mention be made of the specialty in this manner, to wit, to recognise upon their oath if B. formerly the husband of A., on the same day on which he espoused her, or at any time afterwards, was seysed in his demesne as of fee of so much land with its appurtenances in such a vill, so that he could endow her therefrom, or if the aforesaid B. before he espoused the said A. gave that land to C. de N. and gave him a charter thereof; or thus: if B. formerly the husband of A. on the day on which he espoused the said A. held so freely and in fee so much land &c. so that he could endow the said A. therefrom, as she herself says, or if he held that land in villenage and as a villein, as C. against whom the aforesaid A. claims the third part in dower, says: or otherwise whether he held that land as his right and in fee &c., or if he held it in guardianship, or as the right of his first wife, or for a term of years, or for the term of his life only: because the aforesaid B. as well as the aforesaid A. have put themselves on a jury thereon, and meanwhile let them view that land, and whereupon let them meanwhile so certify themselves, that they may be able more fully to certify our aforesaid justiciaries &c. on the day aforesaid (if the knights who are the jurors, ought to come before the king). But if they ought to come before the viscount or the coroners, then thus: and the inquest which thou hast made thereon do thou make known to our justiciaries on such a day by your letters sealed with thy seal and with the seal of the aforesaid jurors and by two of those, by whose oath thou hast made the inquest. And the cases are infinite, which may be brought under that inquest.

held it in villenage, or it was the right of another wife, or held only for a term of years, or for life, or such like.

f. 310.

8. Quod potest cognoscere, quod seysitus fuerit ut de feodo, sed antequam illam desponsaret, illam dederat ita, &c.

Item contra uxorem petentē excipere poterit, q si in seysina fuit ut de feodo, tamē terrā illam dederit antequā eam desponsaret, ita q̧ die quo vir suus eam desponsavit, non fuit in seysina, nec unquā postea, ita q̧ eam inde dotare posset, quia alius illam tenuit in feodo, vel ad vitā quacunq̧ ratione, & nunquā deliberata fuit in vita viri. Ad q̧ respondere poterit mulier replicando, quia licet nunquā seisinam habuerit vir suus postquam eam despōsavit, tamen dotata fuit sub tali conditione q̧ terra illa assignaretur ei in dotē cùm esset deliberata, & super hoc ꝓcedendū est ad inquisitionem.

9. Ad hoc, responsio et replicatio. Britton, v. ch. x. § 2.

Item excipere poterit contra mulierē, quòd si vir suus inde seysinam habuerit ut de feodo, tamē non ita inde ut de feodo, q eam dotare posset, quia terra illa fuit jus alienum, & illam amisit per judiciū. Ad hoc autē poterit respondere mulier, q̧ seysitus fuit ut de feodo, ita quod eam dotare potuit, & si illam amisit p judicium, hoc fuit per fraudē, q̧ esse poterit: ut si uxor ad ostium ecclesiæ dotata fuerit nominatim, & vir postmodū dotē nominatā alienaverit aliquo titulo alienationis, et postmodum seysinam sibi resumpserit quocunq̧ modo, & implacitatus fuerit ratione primæ alienationis, & sic per judicium amiserit: licet postmodū mulieri dotē petenti opponatur quòd vir suus p judicium amisit, hoc non nocebit, quia ante alienationē dotata fuit & incepit jus habere, q quidē per factū viri sui mutari nō debuit. Et q̧ mulier amittit dotem ubi vir p judicium amiserit, & de eo cōstiterit, inveniri poterit in itinere M. de P. in com̃ Lync. anno regis H. x., de Alicia quæ fuit uxor Ric. filii Divæ.[1]

[1] "et quod mulier" down to "Divæ" omitted in MS. Reg. 9 E. xv.

Likewise he may except against a wife claiming, that if he has been in seysine as of fee, nevertheless he gave away the land before he espoused her, so that on the day on which her husband espoused her, he was not in seysine, nor at any time afterwards, so that he could endow her, because another person held that land in fee, or for his life in whatever manner, and it was never delivered in the life of the husband. To which the woman may answer by replying, that although her husband never had seysine after he espoused her, nevertheless she was endowed under this condition, that the land should be assigned to her for dower whenever it should be delivered, and upon this proceedings must be had for an inquest.

8. That he may acknowledge that he was seysed as of fee, but before he espoused her, he gave it, &c.

Likewise he may except against the woman, that if her husband had seysine thereof as of fee, nevertheless not so of fee as to be able to endow her, because that land was another's right, and he lost it by a judgment. But to this the woman may reply, that he was so seysed as of fee that he could endow her, and that if he lost the land by a judgment it was lost through a fraud, which may be the case: as if a wife has been endowed at the door of the church specifically, and the husband afterwards has alienated the specific dower by some title of alienation, and afterwards has resumed seysine for himself in some manner or other, and he has been impleaded on the ground of the first alienation, and so has lost it by a judgment, although afterwards it be objected to the woman claiming dower that her husband has lost it by a judgment: this shall not prejudice her, because she was endowed before the alienation, and began to have her right, which ought not to be changed by the act of her husband. And that the woman loses her dower when the man has lost by a judgment, and this has been established, may be found in the iter of Martin de Pateshull in the county of Lincoln in the tenth year of king Henry, concerning Alicia who was the wife of Richard the son of Diva.

9. An answer and a reply to this.

10. Replicatio uxoris, si ex dolo vel negligentia viri seysitus amitteret, ut uxorem defraudaret de dote habenda post mortem.

Item replicare poterit mulier q, si p judicium recuperavit, hoc fuit per dolū, vel per negligentiā viri: ut si vir scienter[1] & in odiū uxoris suæ defaltā faceret et ita amitteret, vel alio quocunq, modo, hoc mulieri non nocebit, si ita esse ꝓbatū fuerit. Et de hac materia habetis de termino S. M. anno regis H. iii. incipiente iv., in com̃ Surrey, de Margeria de Bellanallie: quia dolus vel negligentia viri non p̃judicat mulieri. Et si talis petens versus virū recuperasset, tamē non fuit discussum de jure, utrū vir suus jus haberet vel non, non magis quā si petenti restitueret p concordiā. Item replicare poterit mulier contra tenentē q non p judicium sed p concordiā, quo casu distinguēdū erit, quia concordia in foro seculari idem est q transactio. Et est transactio de re dubia & lite incerta, aliquo dato vel ꝓmisso vel retēto, à lite transactio. Et unde cùm vir mulieris petentis p amicabilē compositionē recognoverit rem petitā esse petentis, refert utrum res petita sit propria vel aliena, vz. jus alienum vel jus ꝓprium, vel dubium utrum ꝓprium vel alienum: sed si constare possit, quòd res propria & jus ꝓprium, & forte in fraudē vel odium mulieris, ut prædictū est, vel ꝓpter lucrū habēdū, recognoverit esse jus alienum, hoc non obstante mūlier dotē recuperabit, ad quemcunq, res petita vel recognita pervenerit. Sed refert utrū hoc fiat ante desponsationē vel post. Si autē res fuerit aliena & jus alienū, licet antecessor suus seysitus ut de feodo obierit, quia p disseysinam vel intru-

f. 310 b.

[1] "ut si vir scienter amittat ut "uxorem defraudaret de dote ha-" benda post mortem," MS. Rawl. C. 160.

10. The reply of the wife, if the husband having been seysed has lost his seysine through fraud or negligence, that he might defraud his wife of her enjoyment of dower after his death.

Likewise the woman may reply that, [if another person] has recovered by a judgment, this has happened through the fraud or negligence of her husband, as if the husband knowingly and in hatred of his wife has made default and so has lost it, or in some other manner, this shall not hurt the woman, if it has been proved to be so. And on this subject you have a case in Michaelmas term in the third and fourth years of king Henry in the county of Surrey concerning Margery de Billenallie, because the fraud or negligence of the husband does not prejudice his wife. And if such a claimant has recovered against her husband, nevertheless there was no dispute about the right, whether the husband had the right or not, no more than if he restored it to her by an accord. Likewise the woman may reply against the tenant that it was not by a judgment, but by an accord, in which case a distinction has to be made, because an accord in a secular court is the same as a compromise. And a compromise is about a doubtful matter and an uncertain suit, something having been given or promised or retained, a compromise of the suit. And hence when the husband of the female plaintiff has by an amicable composition recognised that the thing claimed is the claimant's, it is of importance whether the thing claimed was his own or another person's, to wit, another person's right, or his own right, or doubtful whether his own or another's: but if it can be established, that the thing was his own and the right was his own and that by chance in fraud or in spite of the woman, as has been said above, or for gain's sake, he has recognised the right to be another's, notwithstanding this the woman shall recover her dower, into whosesoever hands the thing claimed or recognised has passed. But it is of importance whether this has happened before the espousals or after them. But if the thing was another person's, and the right another person's, although his ancestor died seysed of it as of fee, because he had entered upon it by disseysine

f. 310 b.

sionem ingressum habuit, tamen non fuit ita seysitus in feodo, quòd uxorē dotare posset, & uxor contra ꝓprietarium ageret, dotem non recuperaret,[1] quia alius majus jus habuit quàm vir suus. Et quia si ad judiciū ꝓcederetur, certū esse posset ꝗ petens per judiciū recuperaret, si judiciū ꝓcederet. Et hoc verū est de ꝓprietario: secus autē si alteri recognitū esset qui jus in recognita non haberet. Sed si vir ꝑ concordiā aliquid retinuerit de concordia, & jure alieno, sive vir illud retinuerit vel alienaverit sive non, mulier inde dotē habebit, ad quēcunq; res retenta postmodū pervenerit, ut videri poterit inter duos fratres, quorum pater moritur seisitus de tota hæreditate, & postnatus se ponat in totā hæreditatē, & postea concordati fuerint quòd frater postnatus tenens recognoscat totā hæreditatē esse jus fratris antenati petētis, & ipse postmodum scilicet frater antenatus recognoscat & concedat postnato medietatem unam illius terræ, tenendā de eo vel alio: si postnatus postmodum moriatur, uxor dotē habebit de illa medietate quæ viro suo recognita fuerit & concessa, et de alia medietate nihil, quia vir suus nunquam terrā illam habuerit ita in feodo quòd uxorē dotare posset, quia seisina sua fuit de jure alieno. Sed quid si frater suus antenatus præmoriatur superstite postnato? uxor sua non recuperabit dotem, nisi de medietate illa quā vir suus retinuit, quia quamvis de jure totius hæreditatis facta esset recognitio, tamen de medietate rei petitæ vir suus nunquàm fuit in seysina, nisi tantū de servitio. Et si à mulieribus petentibus (sicut prædictū est) petatur ꝗ ostendat warrantū de dote sua, alium osten-

[1] "uxor contra proprietarium dotem recuperaret." MS. Reg. 9 E. xv.

or intrusion, he was nevertheless not so seysed of it as of fee, that he could endow a wife, and that the wife could sue the proprietor, and recover her dower, because another person had more right in it than her husband. And because if proceedings were taken for a judgment, it might be certain that the claimant would recover by a judgment, if the judgment should proceed. And this is true concerning the proprietor, but it would be otherwise, if it had been recognised as his, who had no right in the thing recognised. But if a husband through an accord has retained something of an accord and of another's right, if the husband has retained this or alienated it or not, the wife shall have dower thereof, to whomsoever the thing retained has afterwards passed; as may be seen between two brothers, the father of whom has died seysed of the whole inheritance, and the younger brother has put himself into possession of the whole inheritance, and afterwards they have made an accord that the after-born brother the tenant shall recognise the entire inheritance to be that of his elder-born brother the claimant, and he himself afterwards, to wit, the elder-born brother, recognises and grants to the younger-born one moiety of that land, to be held from him or from another; if the younger-born dies afterwards, his wife shall have dower of that moiety which was recognised and granted to her hushand, and of the other moiety nothing, because her husband never had that land so in fee that he could endow his wife, for his seysine was founded on another's right. But what if the elder-born brother predeceases leaving the younger-born brother surviving him, his wife shall not recover her dower except out of that moiety which her husband retained, because although of right there has been a recognition of the entire inheritance, nevertheless of a moiety of the realty claimed her husband never was in seysine excepting only of the service. And if it be claimed by female plaintiffs (as aforesaid) that she should produce a warrantor of her dower, they cannot produce any other

dere non possunt nisi hæredē defuncti, qui eis warantizare tenetur dotes suas. Si autē postnatus, cùm implacitatus esset de toto, recognosceret medietatem esse jus petentis, & remitteret: uxor sua dotē non recuperabit, quia recognitio illa ex dolo, vel odio, vel cupiditate non ꝓcessit, sed quasi de jure alieno. Et iste casus similis esse poterit casui inter Wilhel. de Breuse filio Joh. de Breuse fratris antenati, & Reginaldū de Breuse fratrem postnatū, versus quem Waldebusa quæ fuit uxor Wilhelmi dotē petiit de medietate, quæ remansit prædicto Reginaldo fratri postnato ꝑ concordiā factā inter ipsum & Wilhelmū nepotē suum. Item quod dicitur de re dubia, verum est quòd dotem suam recuperabit in hoc dubio ꝓpter incertitudinē, quia cùm dubium sit, poterit vir recognoscere & remittere adeo bene jus suum ꝓprium sicut alienum, quod non est in casu supradicto, quia ibi remittitur f. 311. & recognoscitur certū, & hæc est causa quare mulier dotē petere poterit de re recognita ꝑ concordiam, quia vir suus adeo bene remittere poterit jus ꝓprium sicut alienum, sed ꝗ ibi dicitur intelligendum est non de re certa sed incerta.

11. Si vir alienaverit terram suam antequam desponsaret.

Concedere etiam poterit tenens ꝗ talis vir suus seysitus fuit ut de feodo & jure & in dominico, et ita ꝗ eam dotare posset, sed rem illam de qua dos petitur alienavit vir suus antequā eam desponsavit, ita ꝗ die desponsationis sua nō fuit vir seysitus quòd eam inde dotare posset, eo quòd illā priùs dederat alicui in feodo sibi & hæredibus suis, vel alicui ad vitam quacunq; ratione, vel in feodo, sicut in liberum maritagiū sub conditione tacita vel expressa, q res data revertatur ꝑ defectu hæredum, vel sub alia conditione tacita vel

than the heir of the deceased, who is bound to warrant to them their dowers. But if the after-born son, when he has been impleaded concerning the whole, has acknowledged that the moiety is the right of the claimant and releases it, his wife shall not recover her dower, because that acknowledgment has not proceeded from fraud or spite or covetousness, but is as it were concerning another's right. And this case may be assimilated to a case between William de Breuse the son of John de Breuse the elder-born brother and Reginald de Breuse the younger brother, against whom Waldebusa, who was the wife of William, claimed dower in respect of the moiety which remained to the aforesaid Reginald the younger-born brother by an accord made between him and William his grandson. Likewise what is said concerning a doubtful matter, it is true that she shall recover her dower in this doubtful case on account of the uncertainty, because since it is doubtful, the husband may recognise and release his own right as well as another's, which is not in the case aforesaid, because there something certain is recognised and released, and this is the cause wherefore a woman may claim her dower of a thing recognised by an accord, because her husband may as well release his own right as the right of another, but what is there said is to be understood not concerning a certain thing but concerning an uncertain thing.

f. 311.

11. If the husband has alienated his land before he espoused his wife.

The tenant may also concede that the so-and-so her husband was seysed as of fee and of right in demesne and in such a manner that he might endow her, but her husband alienated that realty, from which dower is claimed, before he espoused her, and so that on the day of her espousals her husband was not so seysed of it that he could endow her therefrom, inasmuch as he had previously given it to some one in fee for himself and his heirs, or to some one for life in some way or other, or in fee, as for a free maritage under a tacit or express condition, that the thing given should revert on failure of heirs, or under some other tacit or express condition, which if

Britton, v. ch. x. § 2.

expressa, qua existente remaneret, & ea deficiente res data reverteretur. Item quòd res data de qua dotem petit priùs assignata fuit alteri mulieri quæ adhuc vivit, & si mortua fuerit, non fuit in vita viri mulieris petentis deliberata, secūdū q inveniri poterit in itinere W. de Ralegh in coñ Leyc. circa finē, et expressiùs in itinere abbatis de Radinge & M. de P. in coñ Hertford, anno regni regis Henrici v. incipiente vi., de Ascelma Pickednese. Item q tempore viri sui non evenit conditio, licet postmodū evenerit. Ad q mulier replicare poterit, q licet conditio non evenerit tempore viri sui, nec dos deliberata fuerit suo tempore, tamen ipsa fuit dotata sub tali conditione, q res talis ei assignata esset pro dote sua quandocunq, existeret cōditio, vel quādocū q dos esset deliberata, et si dicat tenens contrarium, de veritate inquirenda ꝓcedatur ad inquisitionem. Sed hoc intelligendum est [1] q mulier dotem de terra quā tenet in gavelkynde, & hæres hæreditatis sed de feodo militari, ut de termino S. Michaelis annò regni regis Henrici septimo incipiente viii., de quodā Thoma de Nassendene.

12. Exceptio contra mulierem, quod vir suus feloniam fecerit.

Britton, v. ch. x. § 3.

Poterit etiam tenens concedere q vir mulieris seysitus fuit ut de feodo & jure et in dominico, et ita q eam dotare potuit, et dotavit eam ad ostium ecclesiæ, sed postea feloniam fecit, de qua convictus fuit & suspensus vel utlagatus, vel q regnum abjuravit, et licet dos rite cōstituta fuit ad ostiū ecclesiæ, tamē peti nō poterit superveniente felonia cōvicta, et licet justa videatur ab initio, tamē eliditur petitio ꝓpter exceptionē feloniæ. Et licet dos ante feloniā ꝑpetratā ritè fuerit cōstituta, tamen ꝓpter feloniam peti non poterit,

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[1] "Sed hoc intelligendum" down to "Thoma de Nassendene," omitted, MS. Rawl. C. 160, and Reg. 9 E. xv.

it continued it would remain with him, and if it failed the thing given should revert. Likewise that the thing given from which she claims dower was previously assigned to another woman, who is still alive, and if she were dead, it was not delivered in the lifetime of the husband of the claimant, according to what may be found in the iter of the abbot of Reading in the county of Leicester near the end of it, and more expressly in the iter of the abbot of Reading and Martin de Pateshull in the county of Hertford in the fifth and sixth years of the reign of king Henry concerning Ascelma Pickednese. Likewise that in the time of her husband the condition did not happen, although it afterwards happened. To which the woman may reply, that although the condition did not happen in the time of her husband, nor was the dower delivered in his time, yet she herself was endowed under this condition, that the said realty would be assigned to her for dower whenever that condition should have happened, or whenever the dower should have been delivered, and if the tenant says the contrary, let an inquest be proceeded with to inquire into the truth. But this is to be understood that the woman claims dower of land which she holds in gavelkind and the heir claims the inheritance as a military fief, as in St. Michael's term in the seventh and eighth years of king Henry, concerning a certain Thomas de Nassendene.

12. An exception against the woman, that her husband has committed a felony.

The tenant may also concede that the husband of the woman was seysed as of fee and right and in demesne and so that he could endow her, and that he endowed her at the door of the church, but afterwards he committed a felony, for which he was convicted and hung or outlawed, or that he abjured the realm, and although the dower was appointed at the door of the church, nevertheless it cannot be claimed since a felony supervened, and although it seems just from the commencement, nevertheless the petition is parried on account of the exception of felony. And although the dower was appointed before the perpetration of the felony, nevertheless it cannot be claimed

ꝑpter exceptionem feloniæ: non magis quā seysina alicujus terræ datæ post mortem donatoris, de qua nullā seysinam haberet in vita donatoris, quāvis alia omnia concurrerent q̃ faciunt donationē, scilicet recognitio donationis facta cum solennitate in comitatibus, hūdredis & curiis cum charta et homagio, et omnibus aliis, quia seysina in vita donatoris habita totū operatur. Et eodem modo licet donatio facta sit à felone ante feloniam sine seysina, non valebit donatio licet postmodū post feloniam seysinam habuerit: dum tamē felia aliquo modo cōvincatur, secùs si ante feloniam omnia rite acta fuerint, non revocantur, nec post feloniā, ubi felonia non fuerit convicta: ut supra de donationibus de hac materia.

13. Responsio mulieris. f. 311 b.

Et ita licet dos ante feloniā ritè fuerit constituta, tamen post feloniam peti non potest à muliere quòd sit ei assignata, non magis quam seysina data (ut supra) nisi in casu speciali, sicut in Kancia, ut supra dictum est pleniùs inter placita coronæ, ad ꝗ poterit mulier replicare, vel quòd vir suus nullam feloniam fecerit, vel si fecit, non fuit ritè et secundum legem terræ utlagatus, & postea hoc probato, fuit per regem ad omnia restitutus, quia quasi utlagaria nulla, & sic fuit hæreditas sua sibi restituta. Item quòd per voluntatem regis et non debito modo fuit utlagatus. Item vel quòd nunquam fuit utlagatus vel convictus, per quod hæreditas sua posset esse eschaeta dominorum. Item si convictus, tamen post convictionem de licentia regis se contulit religioni: sed ista replicatio non sufficit, cùm perfectum sit judicium licet non executum, quia de gratia regis est quòd hujusmodi convicti ha-

on account of the felony, on account of the exception of felony, no more than the seysine of a certain land given after the death of the donor, concerning which he had no seysine in the lifetime of the donor, although all other things concur which constitute a donation, to wit, the recognition of the donation made with solemnity in the counties and the hundreds and the courts with a charter and homage and all other matters, because seysine had in the lifetime of the donor operates the whole. And in the same way although a donation has been made by a felon before his felony without seysine, the donation will not avail, although he has afterwards had seysine after the felony, provided however that the felony has been in some way matter of conviction, otherwise if before the felony all things have been duly performed, they are not revoked, nor after a felony, where the felony has not been matter of conviction, as above concerning donations on this matter.

13. The answer of the woman.

And so although the dower has been duly appointed before the felony, nevertheless it cannot be claimed by the woman after the felony, that it should be assigned to her, no more than that seysine should be given to her (as above), except in a special case as in Kent, as has been said above more fully amongst the pleas of the crown, to which the woman may reply, that her husband has not committed any felony, or if he has, he was not outlawed duly and according to the law of the land, and afterwards upon this having been proved, he was restored to everything by the king, because his outlawry was as it were null, and so his inheritance was restored to him. Likewise that he was outlawed by the will of the king and not in due manner. Likewise that he never was outlawed or convicted, whereby his inheritance could be an escheat of the lords. Likewise if he was convicted, yet after his conviction with the license of the king he has betaken himself to religion, but that reply does not suffice, when the judgment has been complete although not executed, because it is from the grace of the king that convicts of

f. 311 b.

bere possunt vitam, ita tamen quod se conferant religioni, vel abjurent regnum, quia in regno remanere non possunt post convictionem, sicut contigit de Johanne de Herlezim de London, qui de gratia regis se reddidit Hospitali. Sed jam videamus, quid juris si filius alicujus et hæres ante dotis assignationem feloniam fecerit, et si mulier propter hoc dotem amittere debet.

14. Si filius alicujus et hæres ante dotis assignationem feloniam fecerit.

Item esto quòd hæres alicujus, et warantus de dote mulieris, post mortem antecessoris ante dotis assignationem feloniam fecerit, quæritur an propter hoc dotem amittere debeat? videtur prima facie quòd sic, quasi ei deficiat warantus de dote sua, & valent (ut videtur) quæ ritè facta sunt ante feloniam, sed ea quæ agenda sunt post feloniam non convalescunt. Sed revera propter hoc dotem non amittit, quia etsi talis desinat esse warantus, ille incipit esse loco hæredis & waranti ad quam hæreditas pervenerit ratione eschaetæ, et quia vir uxoris feloniam non fecit, aliud tamen dicendum est de uxore felonis. Jam videamus quid sit agendum, si cùm mulier dicat se nihil habere, constiterit quòd habeat partem dotis.

15. Contra mulierem, unde nihil habet.

Ad hoc autem quod dicit mulier in intentione sua, Et unde nihil habet: si quidem partem dotis habuerit quamvis minimam, si hoc dedicere non possit, vel cùm hoc probatum fuerit, cadit breve, nec de residuo quod ei defuerit poterit sibi prospicere, nisi per breve de recto de dote, de quo inferiùs dicetur suo loco. Nihil igitur recipiat de dote sua ante brevis impetrationem,

this kind can have their life, on the condition that they betake themselves to religion or abjure the realm, because they cannot remain in the realm after conviction, as happened in the case of John de Herlezim of London, who by the grace of the king betook himself to the Hospital. But let us now see, what right there is, if the son and heir of any one before the assignment of dower has committed felony, and if the woman on that account ought to lose her dower.

14. If the son and heir of any one, before the assignment of dower, has committed felony.

Likewise let it be, that the heir of any one and the warrantor of the dower of the woman, after the death of the ancestor and before the assignment of dower has committed felony, it is asked of in that account she ought to lose her dower? it seems at first sight to be so, inasmuch as a warrantor for her dower fails her, and what is duly done before a felony is valid (as it appears), but those things which are to be done after it are not valid. But in truth she does not on that account lose her dower, because although the said person ceases to be her warrantor, he indeed to whom the inheritance has come by reason of the escheat commences to be in the place of an heir and a warrantor, and because the husband of the wife has not committed a felony, another thing however would have to be said concerning the wife of a felon. Let us now see what is to be done, if, when the woman says that she has nothing, it has been ascertained that she has a part of her dower.

15. Against a woman, "whereof she has nothing."

To this, however, that a woman states in her declaration, "and whereof she has nothing," if indeed she has had a part of her dower although a very small part, if she cannot deny this or when this has been proved, the writ abates, nor can she provide for the residue which is wanting to her, except by a writ of right concerning her dower, concerning which we shall speak in its proper place. She can therefore receive nothing of her dower before the suing out of a writ, so that the

ita quòd breve contineat omnes deforciantes, ubicunque fuerint, in uno comitatu, vel in diversis. Et cùm omnes contineantur, tunc primò recipiat, et si recipiat ante judicium etiam sine judicio, non obstabit ei exceptio quòd aliquid habuerit, quia respondere poterit, quòd satisfactum est ei ante judicium. Et si forte partem dotis receperit ante impetrationem à quocunque, faciat eum nominari in brevi sicut alios, & convenire sicut alios, & tunc primò dicere poterit (si objecta fuerit exceptio) quòd talis satisfecit, nec erit multum disputandum utrum ante impetrationem vel post. Si autem talem in brevi non nominaverit, et objecta exceptione, dicat quòd exceptio ei nocere non debeat, quià nihil habet in tali villa, licet in alia tali villa, non valebit sua talis replicatio, quia id quod dicitur (unde nihil habet) non debet referri ad villas, sed ad dotem. Et unde non valet si dicat quòd nihil habet in tali villa, nisi ostendere poterit quòd nihil habeat nomine dotis ubicunque. Et cùm mulier replicando negaverit quòd nihil habuerit, non habebit defensionem per legem, sed veritas inquiratur per patriā de replicatione mulieris ut de itinere.

f. 312.

16. De replicatione mulieris.

Itē replicare poterit, quòd si aliquid habuerit, nihil tamen habet nomine dotis sed alio modo, sicut ratione custodiæ & hujusmodi, & si opus fuerit fiat inde inquisitio in comitatu, ubi dicitur aliquid nomine dotis recepisse, sub iis verbis, vz. Si aliquid tenuerit nomine dotis de tenemento quod fuit talis viri sui: &

writ shall include all the deforcers, wherever they may be, in one county or in divers. And when they are all included then she may for the first time receive, and if she receives anything before judgment also without a judgment, the exception that she has received something will not stop her proceeding, because she may answer that she has been satisfied before the judgment. And if she has received a part of her dower from some one before the suing of the writ, let her cause him to be named in the writ like the others and to be convened like the others, and then she ought to say for the first time (if the exception has been objected to her), that so-and-so has satisfied his part, nor will there have to be much dispute whether before the suing out of the writ or afterwards. But if she has not named the said person in the writ, and upon the exception having been raised, she says that the exception ought not to harm her, because she has nothing in such a vill, although she has something in another such vill, such a reply will not avail her, because that which she says, "whereof she has "nothing" ought not to be referred to vills, but to the dower. And hence it does not avail her, if she says that she has nothing in such a vill, unless she can show that she has nothing in the name of dower in any place. And when the woman in replying has denied that she has received anything, she will not have any defence at law, but let the truth be inquired into by the country concerning the replication of the woman as in the iter.

f. 312.

16. Concerning the reply of the woman.

Likewise she may reply, that if she has had anything, yet she has nothing in the name of dower but in some other manner, as by reason of guardianship and such like, and if it be necessary let an inquest be held thereon in the county, where she is said to have received something in the name of dower, under these words, to wit, if she has held any thing in the name of dower of a tenement which belonged to so-and-so her husband,

si aliquid habuerit, & modo non habeat, quid inde fecit, & vic. mittat inquisitionem; ut de termino Sanctæ Trinitatis anno regis Henrici quarto in comitatu Norff., de Isolda quæ fuit uxor W.

17. Si terra, de qua dotem petit, commissa fuit ad firmam et ad terminum.

Si autem terra de qua mulier dotem petit data fuerit ad firmam et ad terminum annorum, cùm mulier tertiam partem nomine dotis recuperaverit, per officium judicis retinebit firmarius duas partes ultra terminum suum, quousq; inde perceperit ad valentiam illius tertiæ partis quam amisit, ut de termino Sancti Michaelis anno regis Henrici xiv. incipiente xv., in com̃ Suffolk et Essex, de Emma quæ fuit uxor Rogeri filii Swani. Et ad hoc facit de termino Sancti Michaelis anno ix. incipiente x. in com̃ Northamptō de Margeria quæ fuit uxor Henry de Northō. Et in hoc casu semper oportet scire, quantum valeat tertia pars per rationabilem extensionem. Et ita fiat, nisi de tota terra illa nominatim dotata fuerint, quia tunc ipsa recuperabit totam terram illam ut dotem suam nominatam, et ipse firmarius (si charta de termino dedici non poterit) recuperabit ad valentiam terræ petitæ de terra waranti usq; ad terminum suum completum, et hoc per officium judicis, et usq; ad ætatem waranti si warantus fuerit infra ætatem, vel si plenæ ætatis, donec deliberare possit terram quam mulier recuperavit, ut de itinere W. de Raleghe in comitatu Bedf. de quadam Emma Bovastra. Et quid si warantus nihil habuerit, tunc expectet firmarius quousq; dos deliberata fuerit. Et quo casu reversura erit dos ad firmarium cùm deliberata fuerit, tenenda usque ad terminum suum, & tunc demùm ad hæredem, & hoc per

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[1] "Willielm," MS. Reg. 9 E xv. | [2] "Northoñ," M.S. idem.

and if she has had any thing and now has it not, what she has done therewith, and let the viscount send an inquest, as in Holy Trinity term in the fourth year of king Henry in the county of Norfolk, concerning Isolda who was the wife of W.

17. If the land from which she claims dower has been leased to farm and for a term.

But if the land from which the woman claims dower has been given to farm and for a term of years, when the woman has recovered the third part in the name of dower, the farmer through the office of the judge shall retain the two-thirds beyond his term, until he shall have derived therefrom the value of the third part which he has lost, as in St. Michael's term in the fifteenth and sixteenth years of king Henry in the counties of Suffolk and of Essex, in the case of Emma who was the wife of Roger Swainson. And this is supported in St. Michael's term in the ninth and tenth years, in the county of Northampton, by the case of Margery who was the wife of Henry de Northampton. And in this case it is incumbent always to ascertain how much a third part is worth by a reasonable extent. And so let it be done, unless she has been endowed with the whole of the land specifically, because then she shall recover the whole of that land as her specified dower, and the said farmer (if the charter respecting the term cannot be gainsayed) shall recover the value of the land claimed from the land of the warrantor up to his complete term, and this through the office of the judge, and up to the full age of the warrantor, if the warrantor should be under age, or if he be of full age, until he can deliver the land which the woman has recovered, as in the iter of William de Ralegh in the county of Bedford, concerning Emma Bovastra. And what if the warrantor should have nothing, then let the farmer wait until the dower has been delivered. And in which case the dower will revert to the farmer after it has been delivered, to be held up to the end of his term, and then at length to the heir and this by a judgment, although it may be true regu-

judicium: licet regulariter verum sit, q semper reverti debeat ad heredem, quia warantus de dote, vel ad eum qui est loco waranti, qui habet duas partes sicut eschaetam, tamen ad alium quandocunq, reverti debeat, licet warantus non fuerit, p judicium, ut hic ppter defectum waranti, qui escambium facere non potest de termino vel feoffamento et hujusmodi, quia mulier indotata remanere non debet, et de tali reversione non semper fiat mentio in judicio & in rotulatione. Et quòd indotata non remanebit, licet warantus nihil habeat unde excambium faciat tenenti suo, sive nominatim dotata fuerit sive non, inveniri poterit in com̃ Lync. de Alicia vidua, quæ petiit dotem versus T. de S. Licyo.[1]

18. Si dos, quæ petitur, in confinio duorum comitatuum, de qua facienda fuerit inquisitio. f. 312 b.

Cùm autem de constitutione dotis dubitetur, & terra de qua dos petitur fuerit in cõfinio duorū com̃, cùm inquisitio inde fieri debeat, assumantur octo milites de uno comitatu, & octo de alio ut p tales pcedat inquisitio. Et cùm juratores requisiti nihil omninò probent pro muliere, nihil capiet, et idem erit si dubiè, quasi ea nihil probante.

CAP. XIV.

1. De seysina facienda mulieri, si non sit quod opponi possit, quare dotem non habeat.

Cum autem nulla sit exceptio, quæ opponi possit mulieri dotem petenti, nec dedici potest aliquo modo quin ita dotata sit sicut ipsa dicit, fiat ei seysina per tale breve. Rex vicecomiti salutem. Scias quòd cum A. quæ fuit uxor B. in curia nostra coram &c. per ejusdem curiæ nostræ judicium (vel per defaltam talis) recuperavit seysinam suam versus C. de tanta terra cum pertinentiis in tali villa ut de dote sua. Et ideò

[1] "Thomam de sancto Licio," MS. Reg. 9 E. xv.

larly that it ought always to revert to the heir, because he is the warrantor of the dower, or to him who is in the place of a warrantor, who has the two-thirds as an escheat, nevertheless it ought sometimes to revert to another, although he be not the warrantor, through a judgment as here through failure of a warrantor, who cannot make compensation for the term or the feoffment or such like, because the woman ought not to remain without dower, and of such a reversion mention is not always made in the judgment and in the enrolment. And that she shall not remain without her dower although the warrantor has nothing wherewith to make compensation to his tenant, whether she has been endowed specifically or not, may be found in the county of Lincoln concerning Alicia a widow, who claimed dower against Thomas de S. Licyo.

18. If the dower which is claimed is on the confines of two counties, f. 312 b. concerning which the inquest is to be held.

But when there is a doubt about the appointment of dower, and the land from which the dower is claimed is on the confines of two counties, when an inquest thereon ought to be held, let eight knights be assumed from one county and eight from the other that the inquest may proceed before them. And when the jurors have upon the requisition proved nothing at all in favour of the woman, she shall take nothing, and the result shall be the same, if it be doubtful, as if she proved nothing.

Chapter XIV.

1. On giving seysine to the woman, if there be nothing that can be objected to her having her dower.

But when there is no exception that can be objected to a woman claiming dower, nor can it be gainsayed in any manner that she has been endowed as she says, let seysine be given to her under a writ of this kind. The king to the viscount greeting. Know thou that since A. who was the wife of B. in our court before &c. by the judgment of the said court (or by the default of so-and-so) has recovered her seysine against C. of so much land with its appurtenances in such a vill as her dower. And

tibi præcipimus quòd eidem A. sine dilatione de prædicta terra cum pertinentiis plenariam seysinam habere facias, & similiter ei sine dilatione habere facias tot marcas, quæ ei in eadem curia nostra adjudicatæ sunt pro damnis suis, quæ habuit pro injusta detentione, quam prædictus C. ei fecit de prædicta terra & dote sua. Vel aliter: & de terris vel catallis prædicti B. fieri facias tot denarios, & illos sine dilatione haberi facias &c. ut supra. Teste &c. Et unde de nova Constitutione[1] provisum est quòd mulier damna recuperet cum dote sua versus quemcunque possidentem; et maximè de terris & tenementis de quibus vir suus moritur seysitus ut de feodo, nisi ita sit quòd deforcians justam causam habeat differendi dotis exactionem, quod esse poterit, si vir forte aliquem in vita sua feoffaverit, & post mortem suam mulier petat dotem suam versus eum qui tenet, non erit mulieri injuriosa dilatio si warantum vocaverit unum vel plures, quousquè perveniatur ad hæredem warantum mulieris de dote sua, quam quidem si warantizaverit, & incontinenti restituerit, & excambium faciet tenenti, cùm sit sine culpa, nulla debet refundere damna, nec tenens multo fortiùs. Si autem frivolas dilationes quæsierit, quia fraudulentus est in mora, resarcire debet damna: & eodem modo si cùm antecessor suus seysitus obierit, hæres statim alios feoffaverit p fraudem, uterque tam hæres quàm feoffatus propter fraudem damna refundet, unus propter fraudulentam alienationem, & alius propter fraudulentam detentionem. Et ideo considerandum est qualiter, & quando facta fuit alienatio sive donatio, in vita viri vel post mortem, & utrum ille qui

[1] "de nova constitutione," that is, the Statute of Merton, 30 Jan. 1235–36. cf. Matth. Paris. Chronica Majora, Rolls Edition, vol. iii. p. 341. Statutes of the Realm, I. i., from MS. Cotton. Claudius D. 2.

therefore we enjoin you that you cause the said A. without delay to have plenary seysine of the aforesaid land with its appurtenances, and in like manner without delay you cause her to have so many marks, which have been adjudged to her in the same our court for her damages, which she has suffered through the unjust detention, which the said A. has caused to her in respect of the said land and her dower. Or otherwise, and cause ten pennies to be raised from the lands and chattels of the said B., and cause them to be delivered to the said A. without delay &c. as above. Witness &c. And hence by the new Statute it has been provided that a woman shall recover her dower with damages against whomsoever in possession of it, and chiefly from the lands and tenements of which her husband died seysed as of fee, unless it be that the deforceor has a just cause of deferring the exaction of the dower, which may be the case, if the husband in his lifetime has by chance enfeoffed any one, and after his death the woman claims her dower against him who is the tenant, it will not be an unjust delay to the woman if he has called one or more warrantors, until he arrives at the heir who is the warrantor to the wife of her dower, which if he has warranted and forthwith restored, and he shall make compensation to the tenant, since he is without fault, he ought not to refund any damages, and much more the tenant ought not But if he has sought out frivolous delays, because he is fraudulent in his delay, he ought to make good the damages, and in the same manner, if when his ancestor has died seysed, the heir has forthwith enfeoffed others fraudulently, both the heir as well as the feoffee shall refund damages on account of the fraud, one on account of the fraudulent alienation, the other on account of the fraudulent detention. And therefore it is to be considered in what manner and at what time the alienation or donation was made, in the lifetime of the husband or after his death, and whether he who

tenetur restituere, in mora fuerit justa causa vel injusta: quia qui sine culpa est, pœnam sentire non debet. Est etiam alia forma brevis de seysina ei facienda, ubi in judicio recognita est ei dos sua, quæ talis est.

2. Si dos ei recognita fuerit et reddita in curia.

Rex vicecomiti salutem. Scias quòd cùm A. quæ fuit uxor B. in curia nostra, &c. peteret versus C. tantam terram cum pertinentiis in tali villa ut dotem suam, idem C. venit in eadem curia nostra coram eisdem justiciariis nostris &c. et recognovit & reddidit eidem A. prædictam terram cum pertinentiis ut dotem suam, & ideo tibi præcipimus &c. ut supra. Et sciendum quòd in omni casu tenetur deforcians mulieri ad damna sua de terris & tenementis, de quibus vir suus moritur seysitus, si pro dote sua oportet eum placitare, nisi ipse hæres justam causam habeat resistendi, cùm statim & sine placito post mortem viri sui, & ad minus infra xl. dies fuerit ei dos assignanda, quæ die desponsationis fuit ei constituta.

f. 313.

Cap. XV.

1. Qualiter mulier poterit suam dotem amittere, cum fuerit in possessione, et ex quibus causis.

Britton v. ch. x. § 6.

Cum verò mulier sic dotem suam obtinuerit, poterit illam amittere multis modis, vel per consuetudinem quæ in diversis locis pro lege observatur, ut si cùm fuerit ei dos assignata, vel in com̃ Kanc. ante assignationem nupserit alicui, statim amittit terram quam tenet nomine dotis de gavelkind. Idem observatur in civitate London de terris & tenementis in civitate, & alibi in pluribus locis. Et de hac materia inveniri poterit de termino S. M. anno regis H. ii. post guerram in com̃ Kanc. Et sive seysinam habuerit sive

is bound to restore, is in delay for a just or an unjust reason, because he who is without fault, ought not to suffer a penalty. There is also another form of a writ for causing seysine to be given to her, when her dower has been recognised in a judgment, which is of this kind.

2. If her dower has been recognised and restored to her in court.

The king to the viscount greeting. Know thou that when A. who was the wife of B. claimed &c. in our court against C. so much land with its appurtenances in such a vill as her dower, the said C. came in our court before our said justiciaries, and recognised and restored to the said A. the aforesaid land with its appurtenances as her dower, and accordingly we enjoin you &c. as above. And it is to be known that the deforceor is bound in every case to the woman for her damages from the lands and tenements, of which her husband died seysed, if it is necessary for her to implead him for her dower, unless the heir himself has a just cause for resisting her, when her dower, which was appointed to her on the day of her espousals, is to be assigned to her forthwith and without a plea after the death of her husband, and at least within forty days.

f. 313.

Chapter XV.

1. How a woman may lose her dower, when she is in possession of it, and from what causes.

But when a woman has obtained her dower, she may lose it in many ways, either by a custom, which is in divers places observed for law, as if when dower has been assigned to her, or in the county of Kent before the assignment of it, she has married anyone, she forthwith loses the land which she holds in the name of dower of gavelkind. The same is observed in the city of London concerning lands and tenements in the city and elsewhere in many places. And in this matter something may be found in St. Michael's term in the second year of the king after the war, in the county of Kent. And whether she has had seysine or not, if after

non, si post mortem viri inventa fuerit habens in utero conceptum ab alio quàm à viro suo, si nupserit, & licet nupta non sit, si vir inveniatur, vel puer, vel uterque, dotem amittet. Eodem modo dotem amittit propter feloniam vel hujusmodi.

2. Qualiter dotem amittit mulier.

Item antequam fuerit assignata amittet dotem per factum & feloniam viri sui ut suprà, quia si petat, obstabit ei exceptio, quia deficit ei warantus. Item amittit dotem suam cùm fuerit ei assignata, ut si hæres implacitatus fuerit ab eo qui jus habet de duabus partibus, & mulier de tertia & mulier hæredem vocaverit ad warantum & cùm warantizaverit amiserit totum, per hoc amittit dotem nec habebit escambium, quia ex quo convictum est quòd hæres warantus suus de dote sua jus non habet in duabus partibus, nec illa per consequens in tertia parte. Item amittere poterit dotem per negligentiam, & taciturnitatem, ut si cùm fuerit disseysita injustè, tacuerit per tantum tempus quod excedit terminum disseysinæ, vel cùm fuerit disseysita injustè, tacuerit per longum tempus, & postea sine judicio seysinam suam usurpaverit, & disseysitor per hoc seysinam suam rehabuerit, et ipsa nunquam ad seysinam restituitur, sed postea oportet agere de proprietate per breve de recto, quod prædictum est de dote super seysina sua propria.

Cap. XVI.

1. De recto de dote ad terram petendam, quæ per-

Si autem aliquid sit quod ad dotem pertineat, quod per breve de dote non acquisiverit, succurritur ei per breve quod vocatur breve de recto de dote, quod clausum esse debet, et dirigi ad warantum mulieris de

the death of her husband she has been found to have in her womb what she has conceived from another man than her husband, if she has married, and although she may not have married, if the man be found or a boy or both, she shall lose her dower. In the same manner she shall lose her dower on account of felony or such like.

2. In what way a woman loses her dower.

Likewise before it has been assigned she loses her dower by the act and felony of her husband as above, for if she claims it, an exception will be in her way, because a warrantor fails her. Likewise she loses her dower, when it has been assigned to her, as if the heir has been impleaded by him who has a right to the two thirds, and the woman has a right to a third, and the woman has called the heir as a warrantor, and when he has warranted, he has lost the whole, she thereby loses her dower and has no compensation, because since it is proved that the heir the warrantor of her dower has no right in the two third parts, neither has she in consequence any right in the one third part. Likewise she may lose her dower by negligence or by taciturnity, as if when she has been unjustly disseysed, she has kept silence for so long a time as exceeds the term of disseysine, or when she has been unjustly disseysed, she has kept silence for a long time, and afterwards without a judgment has usurped her seysine, and the disseysor has thereby recovered his seysine, and she is never restored to her seysine, but she must afterwards proceed for the property by a writ of right, which has been said above concerning dower upon her own proper seysine.

Chapter XVI.

1. Of a writ of right to dower to claim land, which ap pertains

But if there be anything which appertains to dower, which she has not acquired by a writ of dower, she is aided by a writ which is called a "writ of right to "dower," which ought to be a closed writ, and to be directed to the woman's warrantor for her dower, in the

tinet ad dotem, cum cessaverit breve de dote.

f. 313 b.

Britton, v. ch. xii. §1.

dote sua, in forma supradicta inter brevia de recto. Et refert utrū ipsa aliquando in seysina fuerit, & postea disseysita fuerit, ut supra paulò antedictum est, vel si nunquam fuit in seysina. Et placitum istud deberet deduci in curia waranti, donec curia illa probetur defecisse de recto, quo ꝓbato ponetur loquela usque ad comitatū sicut de aliis placitis de recto, & sic inde ad magnam curiam pluribus de causis prænotatis. De absentia vero utriusque, si non venerint, vel si se essoniaverint, qualiter procedendum erit perpendi poterit ex præmissis. Cùm vero ambo comparuerint, & mulier nunquam seysinam prius habuerit de terra petita, proponat intentionem suam per hæc verba.

2. De formanda et proponenda intentione mulieris.

Peto versus talem tantam terram cum pertinentiis in tali villa, ut pertinentem ad dotem, quæ me contingit de hæreditate B. quondam viri mei. Et unde me dotavit ad ostium ecclesiæ die quo me desponsavit. Et unde idem eodē die fuit seysitus & vestitus, ita quòd me inde dotare potuit. Et si hoc vellet cognoscere &c. ut supra. Et si noluerit, habet sufficientē ꝓbationem, sectam & hujusmodi. Si autem aliquando extiterit in seysina, tunc proponat intentionem suam per hæc verba. Peto versus talem tantum terræ cum ꝑtinentiis in tali villa ut dotem meam, & ut ꝑtinentem ad terram quam teneo in eadem villa nomine dotis, vel in alia, & unde B. quondā vir meus die, quo me desponsavit, tenuit totā terrā illam in feodo & in dominico suo, & me inde dotavit, & ita q̧ post mortem prædicti B. quondam viri mei fui inde in seysina nomine dotis, quousque prædictus talis me injustè &

form described above amongst writs of right. And it is of importance whether she has been some time in seysine, and has afterwards been disseysed, as has been stated a little above, or if she has never been in seysine. And that plea ought to be brought in the court of the warrantor, until that court be proved to have failed in right, upon proof of which the cause shall be carried into the county court as in other pleas concerning right, and so thence to the great court for several causes already noted. But concerning the absence of each, if they have not come, or if they have essoined themselves, in what way proceedings should be taken can be ascertained from the premises. But when both have appeared, and the woman has never had seysine previously of the land claimed by her, let her propound her declaration in these words.

to dower, when a writ of dower has ceased.

f. 313 b.

2. Of forming and propounding the declaration of the woman.

I claim against so-and-so so much land with its appurtenances in such a vill, as appertaining to the dower which belongs to me from the inheritance of B. who was formerly my husband. And whereof he endowed me at the door of the church on the day on which he espoused me. And whereof the same person on the same day was seysed and invested, that he could endow me thereof. And if he is willing to acknowledge this &c. as above. And if he be unwilling, she has a sufficient proof, a sect and such like. But if she has been some time in seysine, then let her propound her declaration in these words. I claim against so-and-so so much land with its appurtenances in such a vill as my dower, and as appertaining to the land which I hold in the said vill in the name of dower, or in another vill, and whereof B. formerly my husband on the day on which he espoused me, held the whole land in fee and in his own demesne, and endowed me therefrom, and so that after the death of the aforesaid B. formerly my husband, I was in seysine thereof in the name of dower, until so-and-so aforesaid disseysed me unjustly and with-

sine judicio disseysivit. Et quòd ita fui inde dotata & seysita habeo sufficientē disrationationem & probationem, videlicet talem sectam & talem.

Proposita sic intentione mulieris poterit tenens warantum vocare, si warantum habuerit, secundum quod supradictum est de waranti vocatione, vel si warantum non habuerit excipere poterit contra mulierem, scilicet quòd terram illam ei sponte reddidit, vel si disseysita fuit, postea jus suum remisit & quietum clamavit, vel si disseysita fuit, postea de brevi suo se retraxit. Et unde producat sectam si habuerit, & si opus fuerit ponat se super patriam, & poterit veritas per patriam declarari. Non autem inter eos erit magna assisa vel duellum, nec p consequens essonium de malo lecti. Et cùm recurrendum ita sit ad patriam, & loquela fuerit in comitatu, videndum si cùm tenens posuerit se in inquisitionem & petens simpliciter, an comitatus habeat potestatem procedendi ad inquisitionem vel juratam nisi hoc fuerit ei specialiter demandatum? Videtur quòd bene potest, quia cùm dicatur in brevi, quòd nisi warantus hoc fecerit quòd vicecomes hoc faciat, videntur omnia esse ei concessa sine quibus loquela illa terminari non possit, & secundum quod in coñ procedi possit ad duellum in alio brevi de recto, ita poterit in hoc brevi ad inquisitionem, sicut procedi poterit ad juratàs, ubi vicecomiti demandatur quòd justiciet. Sed contra cùm in magno brevi de recto contineatur quòd nisi dominus rex hoc fecerit vic. hoc faciat, tamen ad magnam assisam capiendam non procedit, sed pacem habebit tenens usque ad adventum justitiariorum, si breve de pace sibi perquisiverit, & si non, in defalta esse poterit, ut supra de hac materia per breve de recto.

Britton, *ib.* §§ 2, 3.

out a judgment. And that I was so endowed and seysed therewith I have a sufficient deraignment and proof, to wit, such and such a sect.

3. Upon the declaration having been propounded.

Upon the declaration of the woman having been thus propounded, the tenant may call a warrantor, if he has a warrantor, according to what has been said above concerning the calling of a warrantor, or if he have not a warrantor, he may except against the woman, to wit, that she restored to him of her own accord that land, or if she was disseysed, that she afterwards released her right, and quit-claimed him, or if she was disseysed, she afterwards withdrew from her writ. And thereupon let him produce a sect, if he has one, and if it be necessary let him put himself on the country. But there shall not be between them a great assise or wager of battle, nor consequently an essoin of illness confining to bed. And when recourse is to be had to the country, and the suit is in the county court, it is to be seen, if the tenant has put himself upon an inquest and the claimant simply [on the country], whether the county court has the power of proceeding to an inquest or a jury, unless this has been specially committed to it? It seems that it can well do so, because when it is said in the writ, that unless the warrantor should do so, the viscount shall do so, it seems that every thing is allowed to him, without which the suit cannot be determined, and according as proceedings may be had in the county court to wager of battle in another writ of right, so in this writ proceedings may be had to an inquest, just as proceedings may be had to a jury, when it is committed to the viscount that he shall do justice. But on the contrary when it is contained in a great writ of right, that unless the lord do so, the viscount shall do so, nevertheless he does not proceed to hold a great assise, but the tenant shall be at peace until the coming of the justiciaries, if he has obtained for himself a writ of peace, and if not, he may be in default, as above concerning this matter in a writ of right.

f. 314.

Cap. XVII.

1. De exceptionibus contra mulierem petentem, et de amensuratione dotis.

Britton, v. ch. xiii. § 1.

Si autem warantus vocetur unus vel plures, cùm perventum fuerit ad hæredem warantum de dote, si hæres statim recognoscat rem illam ad dotem mulieris pertinere, mulier seysinam habeat cum damnis vel sine, secundum quod superius dictum est. Si autem exceptiones habeat, per exceptiones si possit se defendat. Poterit enim excipere multis modis; s. q terra illa ad dotē suā nō pertineat, vel si mulier inde in seysina fuit, hoc nō fuit nomine dotis sed alia ratione, vel q nunquā inde dotata fuit, sed nominatī de alia vel minore quātitate quā pte tertia, et inde tenuit se contentā, et de hoc sectā pducat, et pbationē. Itē sive in seysina fuerit sive nō, & sive terra ptinens esset ad dotē sive nō, ipsa jus suū de terra illa remisit et quietum clamavit.

2. Responderi poterit, quod plene habet dotem suam, et ideo oportet, quod fiat extensio et admensuratio.

Item q terra nō ptineat ad dotē suā quia habet plenè dotē suā, secundū q ei fuit cōstituta, & plus habet in dotē qm ad ipsū[1] ptinet habendū secundū legē et cōsuetudinē regni. Et unde ipse hæres tulit breve ad comitatū de admēsuratione q tale est. Et q de facili in comitatu terminari nō poterit, si mulier dotē habuerit in diversis comitatibus, quia licet sciat̃ quantū tenuerit in uno comitatu, et quātū valeat tertia pars, & quantū duæ ptes, tñ p hoc cōstare nō poterit de valore omniū terrarū q̃ sunt in aliis comitatib⁹, et nisi cōstiterit de valore omniū terrarū, sciri nō poterit utrū plus habuerit vel minus: ideo nō poterit

[1] "ipsam," MS. Rawl. C. 160, et Reg. 9 E. xv.

CHAPTER XVII.

f. 314.

1. Of exceptions against a female claimant and of the admeasurement of dower.

But if a warrantor be called, one or more, when the heir the warrantor of the dower is arrived at, if the heir forthwith recognises that the realty in question appertains to the dower of the wife, let the woman have seysine with or without damages, according to what has been said above. But if he has exceptions to make, let him defend himself by the exceptions if he can. For he may be able to make exception in many modes: to wit, that the land in question does not appertain to her dower, or if the woman has been in seysine thereof, this was not in the name of dower, but for some other reason; or that she never was endowed thereof, but specifically of another or smaller quantity than a third part, and she was content therewith, and upon this he produces a sect and proof. Likewise whether she has been in seysine or not, and whether the land in question has been appurtenant to her dower or not, she has herself released her right to that land and has quit-claimed him.

2. It may be answered, that she has fully her dower, and accordingly it is incumbent that there be an extent and an inquest.

Likewise that the land does not appertain to her dower, because she has fully her dower, according to what has been appointed to her, and she has more for dower than it appertains to her to have according to the law and custom of the realm. And whereupon the heir produced a writ to the county court for an admeasurement, which is of this kind. And that it cannot be easily determined in the county court, if the woman has dower in divers counties, because although she may know how much she has had in one county, and how much a third part is worth, and how much two thirds, nevertheless it cannot be ascertained thereby concerning the value of all the lands which are in the other counties, and unless it has been ascertained concerning the value of all the lands, it cannot be known whether she has had more or less; accordingly an admeasurement cannot be made, unless

fieri amēsuratio nisi sciatur q plus habeat, qm ad ipsum ꝑtinet habēdum. Igitur ubi plures habuerit terras in diversis com̃, oportet q ꝓcedat amensuratio in curia dñi regis, et q omnes terræ extendātur et apprecientur tam duæ ꝑtes quā tertia, et mittātur extensio et appreciatio justiciariis: secūdū formā supra de extensionibus & appciationibus faciendis, et sic fiat amēsuratio in curia dñi regis. Si autē dotē non habuerit nisi in uno comitatu, vicecomes facere poterit amēsurationē, dū tamē justum [1] et ꝑ hoc breve.

3. Breve de admensuratione dotis in diversis comitatibus.

Rex vic. salutē. Questus est nobis A. filius vel filia, frater vel soror, nepos vel neptis, cōsanguineus vel cōsanguinea et hæres B. q C. q̃ fuit uxor B. plus habet in dotē de libero tenemēto q fuit ipsius B. quōdā viri sui in tali villa (vel in talibus villis) qm habere debet vel ad ipsā ꝑtinet habēdā.[2] Et ideo tibi p̃cipimus q justè & sine dilatione amēsurari facias totā dotē illā, ita q p̃dicta C. nō habeat plus in dotē de hæreditate p̃dicti A. qm habere debet, & ad ipsū[3] ꝑtinet habendum secundum rationabilem dotem, & quòd prædictus A. habeat de dote illa id quod habere debet, & ad ipsum pertinet habendum, ne amplius inde clamorem audiamus pro defectu justitiæ. Teste &c. Et notandum quòd amensuratio debet esse tam de indebito, quàm superfluo: ut si per dominum capitalem mulieri assignatum fuerit capitale mesuagium, vel aliquid quod sit caput baroniæ, si aliud sit de quo dotem possit habere rationabilem, auferatur ei indebitum, & assignetur ei

f. 314 b.

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[1] "justam," MS. Rawl. C. 160.
[2] "habendum," Reg. 9, E. xv.
[3] "cam," id.

it be known that she has more than it appertains to her to have. Therefore where the husband has had several lands in different counties, it is proper that the admeasurement should proceed in the court of the lord the king, and that all the lands be extended and appraised as well the two thirds as the one third, and that the extent and the appraisement should be sent to the justiciaries according to the form above stated concerning the making of extents and appraisements, and so let the admeasurement be made in the court of the king. But if she has had dower only in one county, the viscount may make the admeasurement, provided it be just and through this writ.

3. A writ for the admeasurement of dower in divers counties.

The king to the viscount greeting. A. has complained to us, the son or the daughter, the brother or the sister, the grandson or the grand-daughter, the cousin-male, or the cousin-female and the heir of B., that C. who was the wife of B. has more for her dower in a freehold which belonged to the said B. formerly her husband in such a vill (or in such vills) than she ought to have, or than it appertains to her to have. And therefore we enjoin you that justly and without delay you cause to be admeasured the whole of that dower, so that the said C. may not have more for her dower of the inheritance of the said A. than she ought to have, and than it appertains to her to have according to reasonable dower, and that the aforesaid A. should have of that dower that which she ought to have and which it appertains to her to have, that we may hear no more complaint about a failure of justice. Witness, &c. And it is to be noted that the admeasurement ought to be made as well of that which is undue as well as superfluous, as if the chief messuage or something which is the head of a barony has been assigned to the woman by the chief lord, if there be another of which she can have reasonable dower, let that be taken from her which is undue, and let there be assigned to her what is due, because although what is

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debitum, quia licet indebitū assignatum sit & superfluū, tamen sine judicio ejici non poterit ab hærede, nec ab alio.

4. De officio vicecomitis, et de modo procedendi.

Cùm igitur vic. breve susceperit, sūmonere faciat mulierem q̨ sit sup̧ terram illam de qua fieri debet amensuratio coram vic. & coronatoribus, si interesse possunt, & corā aliis liberis & legalibus hominibus quos vic. secum assumere voluerit. Et mulier summonita aut venit aut non venit. Si autem non venerit, non statim p̧cedatur ad amensurationē, sed capietur terra in manum dñi regis de qua fieri debet amensuratio, & ipsa interim summoneatur cum viro suo (si viro habuerit). Et q terra capi debeat in manum domini regis, p̧batur in itinere M. de P. in com̃ Lync. anno decimo regis H. circa mediū rotuli. Omnes enim de quorum jure agitur, præsentes esse debent in amensuratione facienda. Et si p̃sentes non fuerint, quicquid actum fuerit in eorum absentia revocabitur: nisi forte per malitiam se absentaverint, ut de termino S. T. anno regis H. secundo post guerram, in com̃ Dors., de Hamone de Halmodoston. Si autem p̧ malitiam se absentaverint, nec venerint, nec se essoniaverint legitimo modo, post secundā summonitionem et terræ captionem in manum dñi regis, non erit ulterius sustinendum, sed statim p̧cedat vicecomes ad admensurationem faciendam in odium secundæ defaltæ, et facta extentione et appreciatione adjudicet unicuiq; q̨ habere debebit.

undue and superfluous may have been assigned to her, nevertheless she cannot be ejected by the heir or by any one else without a judgment.

4. Of the office of the viscount and of the mode of proceeding.

When the viscount therefore has received the writ, let him cause to be summoned the woman, that she be present on that land of which an admeasurement ought to be made in the presence of the viscount and the coroners, if they can be present, and in the presence of other free and loyal men whom the viscount may have chosen to take with him. And the woman having been summoned either comes or does not come. But if she has not come, let them not proceed forthwith to the admeasurement, but the land shall be taken into the hand of the king, of which land the admeasurement ought to be made, and let her be summoned herself meanwhile with her husband, if she has a husband. And that the land ought to be taken into the hand of the king is proved in the iter of Martin de Pateshull in the county of Lincoln in the tenth year of king Henry about the middle of the roll. For all the persons whose right is at stake ought to be present at the making of the admeasurement. And if they have not been present, whatever shall have been done in their absence shall be revoked, unless they shall have absented themselves from malice, as in Holy Trinity term in the second year of king Henry after the war in the county of Dorset, concerning Hamo de Halmodoston. But if through malice they have absented themselves and have not come, nor have essoined themselves in a legitimate manner, after a second summons and a taking of the land into the hand of the lord the king, they are not to be endured any longer, but the viscount may forthwith proceed to make the admeasurement in spite of the second default, and upon the extent and appraisement having been made let him adjudge to each party what he ought to have.

5. Cum partes præsentes sint, modus per quem proponat querens intentionem suam.

Cùm autem partes p̃sentes fuerint, proponat querens intentionem suam versus mulierem hoc modo, secundum formam brevis A. queritur quòd B. quæ fuit uxor C. plus habet in dotem de tenemento, quod fuit ipsius C. patris vel alterius antecessoris (ut supra) ipsius A. cujus hæres ipse est, quàm ad ipsam pertinet habendum. Et unde dicit quòd habet in tali villa medietatem unius carucatæ terræ, desicut non fuit dotata nisi de tertia parte, vel quòd habet fere totum manerium, ubi non fuit dotata nisi de quadam minima parte, et de qua tenuit se contentam, vel multo plus habet in dotem quàm habere debet, ultra tertiam partem, vel medietatem, vel ultra partem, unde fuit nominatim dotata, & quòd ita fuit dotata sicut querens dicit et non aliter, si mulier negaverit, producere poterit sectam vel instrumentum, vel aliud per quod probare possit intentionem suam, cùm mulier negaverit. Et quo casu oportebit aliquando de necessitate recurrere ad constitutionem dotis qualiter fuerit constituta, ut probato qualiter fuit constituta, procedatur in amensuratione facienda, nisi mulier exceptiones habeat & responsiones cōtra amēsurationem quare non sit in amensuratione procedendum. Tollit enim amensura tionem aliquando diuturnitas temporis imperpetuum, cùm omnis querela & omnis actio injuriarum limitata sit infra certa tempora. Tollit etiam amensurationem voluntas & consensus hæredis, qui cùm plenæ ætatis esset dotem mulieri assignavit, quia scienti & volenti non fit injuria, & sufficit semel voluisse, & scivit aut scire debuit. Item cùm dominus capitalis vel alius dotem assignaverit, hæres major factus assignationem

5. When the parties are present, the manner whereby the claimant should propound his declaration.

But when the parties shall be present, let the complainant propound against the woman his declaration in this manner; according to the form of the writ A. complains that B. who was the wife of C. has more as dower from the tenement which belonged to the said C. the father or other ancestor (as above) of the said A. whose heir he is, than appertains to her to have. And whereupon he says that she has in the said vill the moiety of one carucate of land, whilst she was not endowed with more than one third part, or that she has nearly the whole of a manor, when she was only endowed with a very small part, and with which she kept herself content; or that she has much more for her dower than she ought to have, beyond a third part, or a moiety, or beyond the part wherewith she was specifically endowed, and that she was so endowed as the plaintiff says, and not otherwise; if the woman should have denied it, he may produce his sect or an instrument, or something else, which may prove his declaration, when the woman has denied it. And in which case it will be incumbent sometimes of necessity to have recourse to the appointment of the dower, in what manner it was appointed, that upon its having been proved how it was appointed they may proceed to make an admeasurement, unless the woman has exceptions and answers against the admeasurement, wherefore they ought not to proceed to an admeasurement. For sometimes length of time takes away an admeasurement for ever, since every plaint and every action for injury is limited within certain times. For the goodwill and consent of the heir takes away an admeasurement, when the heir being of full age has assigned to the woman her dower, because an injury is not done to a person who knowingly and willingly suffers an act to be done to him, and it is sufficient to have been once willing, and he knew or ought to have known it. Likewise when the chief or another lord has assigned the dower, the heir having come to majority has

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illam ratam habuerit per consensum, tacitum vel expressum : dum tamen hoc ꝓbari possit. Tacitum, ꝑ dissimulationem ꝑ longum tempus: expressum, si expresse consenserit instrumento vel alio modo. Item si de amensuratione agatur, non erit estimanda melioratio mulieris quam fecit in dote sua post assignationem, tēpus enim assignationis dotis erit spectandū. Item poterit dicere ꝙ hæres injustè hoc dicit ꝙ habet plus quàm habere debeat in dotem, quia nihil plus habet quàm rationabilem dotem suam secundum legem terræ, & non plus quàm ei fuit constituta, licet in meliori [1] quantitate quam in dote rationabili, et hoc ꝓbet ꝑ sectā, vel alio modo si possit: ut de termino S. Michaelis anno regni regis H. decimotertio incipiente decimoquarto circa medium rotuli. Nota [2] ꝙ habenda est ratio meliorationis in amensuratione facienda. Item dicere possit habita ratione ad meliorationem, ꝙ anno & die quo vir suus obiit, non sufficiebat terra illa quam nunc tenet in dotem plenè ad tertiā partem totius hæreditatis, quæ fuit ipsius viri sui, & si postea dotem suam melioravit, non debet venire in æstimationē sua melioratio. Et si hoc ꝓbari possit, remanebit mulieri dos sua secundū ꝙ fuerit ei constituta.

Britton, v. ch. xiii. § 2.

Cap. XVIII.

1. Quid pertineat ad mulierem facta constitutione dotis et

Facta autem dotis constitutione et assignatione, nihil ꝓprietatis ꝑtinet ad mulierē, nisi tantū seysina et liberum tenementum ad vitam suam, et nihil facere potest ꝙ aliquā habeat ꝓprietatē, nisi quādiu ipsam warantizare potest, quia jus ꝓprietatis remanet cum

[1] "in minori quantitate," MS. Rawl. C. 160.

[2] "Nota" down to "facienda," omitted MS. Rawl. C. 160, et Reg. 9. E. xv.

ratified the assignment by consent, tacit or expressed, provided only that this can be proved. Tacit, by dissimulation during a long time; express, if he has expressly consented by an instrument or in some other mode. Likewise if the admeasurement is under discussion, the amelioration which the woman has made in her dower after its assignment is not to be taken into account, for the time of the assignment is to be looked to. Likewise she may say that the heir unjustly states that she has more than she ought to have for her dower, for she has nothing more than her reasonable dower according to the law of the land, and not more than was appointed to her, although in a less quantity than in reasonable dower, and this she may prove by a sect or in some other manner, if she can; as in St. Michael's term in the thirteenth and fourteenth years of the reign of king Henry, about the middle of the roll. Note, that regard is to be had to the amelioration in making the admeasurement. Likewise she may say, regard being had to the amelioration, that in the year and on the day on which her husband died, the land which she now holds in dower did not suffice fully for the third part of the whole inheritance, which was her said husband's, and if she has afterwards improved her dower, her improvement ought not to come into the admeasurement, and if this can be proved, the woman shall retain her dower according as it has been appointed to her.

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CHAPTER XVIII.

1. What appertains to a woman upon the appointment and the assignment of dower, and

But upon the appointment and assignment of dower having been made, nothing of the proprietorship appertains to the woman, excepting only the seysine and the freehold for her life, and she can do nothing that she should have any proprietorship, except as long as he can warrant her, because the right of proprietorship rests with the heir himself, because he is the warrantor of her

assignatione, et de vasto in dote.

Britton, *ib.* § 5.

ipso hærede, quia warantus de sua dote, vel cum alio ad quē jus ꝑvenerit, sicut nomine eschaetæ, et ratione alienationis et vēditionis. Et unde nihil clamare poterit mulier in dotē suam, nisi q uti & frui possit de rebus dotalibus, sine vasto, destructione, vel exilio. Rationabile verò estoveriū capere possit in boscis ad ædificandū, ardendū, claudendum, dum tamen in dote sua & non extra, ut si vastum, destructionē vel exiliū fecerit ultra rationabile estoveriū, hæres ꝓprietatis, vel alius ꝓprietarius, sine alicujus injuria poterit eum[1] impedire. Nec competit mulieri assisa novæ disseysinæ, si queratur q ꝑ hoc disseysita sit de libero teñto suo, quia tantum conceditur ei rationabile estoverium, quod non extendit ad vastū. Et si forte talis impediri non possit, recurrendum erit ad superiorē, s. ad regē, qui ꝑcipiet vic. q non ꝑmittet talem mulierem vastum facere. Et si propter hoc non omiserit, tunc attachietur mulier quòd sit coram rege ad ostendendū quare vastū fecerit. Breve vic. dirigendum quòd non permittat, tale erit.

f. 315 b.

2. Cum mulier in dote vastum fecerit et destructionem, de prohibendo ne vastum faciat.

Rex vic. salutem. Præcipimus tibi quòd non permittas q talis mulier faciat vastum vel venditionem vel exiliū de terris, hominibus, redditibus, domibus, boscis, vel gardinis q̃ tenet in dotē de hæreditate talis in tali villa, ad exhæredationē ipsius talis, ne amplius &c. T. &c. Et hoc faciat tempestivè, ne ꝑ negligentiam damnum incurrat, quia melius est in tempore occurrere &c. Et si per hoc non omiserit, attachianda erit per tale breve.

3. Si non omittat

Rex vic. salutē. Si talis fecerit te securum de clamore &c. tunc pone ꝑ vadiū & salvos plegios talem

[1] "eam," MS. Rawl. C. 160.

dower, or with some other person to whom the right has devolved, as in the name of an escheat, and by reason of alienation and sale. And whence the woman can claim nothing for her dower, except that she may use and enjoy the things which compose her dower, without waste, destruction, or exile [of serfs]. But she may have reasonable estovers in woods for building, burning, fencing, provided they are within her dower and not outside it, and if she have caused waste or destruction or exile [of serfs] beyond reasonable estovers, the heir of the proprietorship, or some other proprietor, without injury to any one may stop her. Nor is a woman entitled to an assise of novel disseysine, if she complains that she has been disseysed of her freehold, because reasonable estovers are alone allowed to her, which does not extend to waste. And if by chance such a person cannot be stopped, recourse must be had to a superior, that is, to the king, who shall enjoin the viscount that he should not permit such woman to cause waste. And if she has not thereupon ceased, then the woman shall be attached, that she appear before the king to show cause wherefore she has caused waste. The writ to be directed to the viscount that he should not permit her, will be of this kind.

of waste in dower.

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2. When a woman has caused waste and destruction in her dower, of prohibiting her from causing waste.

The king to the viscount greeting. We enjoin you that you do not permit that such a woman cause waste or sale or exile of the lands, men, rents, houses, woods, and gardens, which she holds in dower from the inheritance of so-and-so in such a vill, to the disherison of the said so-and-so, that no more &c. Witness &c. And let him do this soon, less through negligence he may incur loss, because it is better in time to meet &c. And if she has not thereupon ceased, she is to be attached by a writ of this kind.

3. If she does not

The king to the viscount greeting. If so-and-so has given you security for his complaint &c., then require

vastum quin vastum faciat, forma brevis, quod fiat de attachiando mulierem.

mulierē &c. q sit coram nobis vel justiciariis nostris tali die apud talem locum, ostensura quare fecit vastū, venditionem, & exilium, de terris, hominibus, redditibus, boscis, vel gardinis quæ tenet in dotem de hæreditate talis, in tali villa, contra ꝓhibitionē nostram, & habeas ibi nomina pleg. & hoc breve. T. &c. Et ita si ad alium diem non venerit, observet ordo attachiamentorū donec venerit, dum tamē unicum habeat essoniū de malo veniēdi post primū attachiamētū, si voluerit.

4. De modo procedendi in hujusmodi placito, cum post dilationes comparuerit.

Cùm autē post dilationes cōparuerit, querens ꝓponat intentionem suā hoc modo. Quòd talis queritur ut parens vel amicus talis minoris, q cùm talis mulier teneat in tali villa tantam terram nomine dotis, tale facit vastū et talē destructionē, q terrā talē vēdiderit, vel servos: domos ꝓstraverit tot, & boscū vendidit, gardinū extirpavit in p̃dicta terra ad exhæredationem talis hæredis ad valentiam tanti, et inde ꝓducit sectam &c.

5. Responsio mulieris contra querelam.

Ad q poterit mulier multipliciter respōdere sic: Et talis mulier venit & defendit vastum, venditionē & exilium cōtra talē, et sectam suam. Et q nihil inde vendidit, nec aliquid tale fecit ad exhæredationē talis hæredis, & cognoscere poterit q domus ob vetustatē corruerit, et ipsa ibi construxit meliores, vel si de bosco cepit aliquid, non cepit ibi nisi rationabile estoverium suum ad ardendū, ædificandum, & claudendū in terra illa, quam tenet nomine dotis, et nō extra. Et q nihil amplius cepit, nec alio modo, poterit se ponere super inquisitionem patriæ, licet sunt quidam qui dicunt quod contra sectam q̃rentis poterit se defendere per

such woman to find bail and safe sureties that she will appear before us or our justiciaries on such a day at such a place, in order to show cause wherefore she has caused waste, sale, and exile, of the lands, men, rents, woods, or gardens which she holds for her dower of her inheritance of so-and-so in such a vill against our prohibition, and have there the names of the sureties and this writ. Witness &c. And so if she has not come on another day, let the order of attachments be observed until she has come, provided however that she have a single essoin of sickness on her journey after the first attachment, if she has wished it.

cease from causing waste, the form of a writ for attaching a woman.

But when after some delays she has appeared, let the plaintiff propound his declaration in this manner. That so-and-so complains as the parent or friend of so-and-so, a minor, that when such a woman holds in such a vill so much land in the name of dower, she causes such a waste and such a destruction, that she has sold so much land or serfs, has pulled down so many houses, and has sold wood, and extirpated a garden in the aforesaid land to the disherison of so-and so the heir to the value of so much, and thereon he produces a suite &c.

4. Of the mode of proceeding in such a plea when after some delays she has appeared.

To which the woman may make answer thus: And the said woman comes and defends the waste, the sale, and the exile against so-and-so and his sect. And that she has sold nothing thereof, nor has done anything of that kind to the disherison of the said heir, and she can show that the house fell down from old age, and she has constructed for herself better houses, or if she took anything from the wood, that she did not take thence anything except reasonable estovers to burn, or to build, or to fence upon that land which she holds as dower, and nothing beyond. And that she has taken nothing more, nor in any other mode, she can put herself upon an inquest of the country, although there are some who say that against the sect of the plaintiff she may defend

5. The answer of the woman to the complaint.

legem, et sic evadere pœnā: q esse non debet, quià cùm damnum ita factū sit in re corporali q manifestum erit aspectibus oculorum, non poterit p legē defendere q non sit ita, quia sic esset visus contrarius sacramento juratorum. Melius igitur est quòd cùm mulier vastum defendat, q fiat visus de re vastata contra ꝓhibitionē, & qualitate facti, & quantitate.

6. Fiat visus de vasto, et fiat inde inquisitio

Et cùm p visum & sacramentum ꝓborū hominū & legaliū de vasto constiterit, emendetur vastum. Sed in omnibus obligationibus, & cōtractibus, & stipulationibus, quæ consensu & animo contrahuntur, sicut in conventionibus, ꝓmissionibus, donationibus, venditionibus, & hm̃odi, si tamē secta ꝓducatur, & secta examinata fuerit, et tantū p̃sumptionē inducat, poterit ille de quo queritur contra sectam talis se defēdere per legē, duplicatis ad minus ꝑsonis juratorū, quia cùm plures sint in defensione, dicta eorū majorē faciunt p̃sumptionē. Et sic major præsumptio vincit minorem. Si autē querens ꝓbationem habuerit, sicut instrumenta & chartas sigillatas, contra hujusmodi ꝓbationes non erit defensio p legem. Sed si in instrumento contradicatur, fides instrumenti ꝓbabitur per patriam & per testes.

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7. Item respondere potest ad vastum mulieris.

Poterit etiam mulier respondere, q si vastum ibi factum sit, non fuit factum tēpore suo, sed tēpore alterius, s. viri sui, custodis, vel hæredis ante assignationem dotis, q si querens negaverit, veritas inquiratur per patriam.

8. Uterque ponere se possit in patriam

Cùm igitur necesse sit visum facere de vasto, cùm querens sectam habuerit, et mulier vastum defenderit, et uterq; se posuerit super patriā, p̃cipietur vic. q

herself by her law and so escape a penalty, which ought not to be, for since damage has thus been done in a corporeal thing which is manifest to the sight of the eyes, she cannot by her law deny that it is not so, for so the view would be contrary to the oath of the jurors. It is better, therefore, that when the woman denies waste, that a view be taken of the thing wasted against the prohibition both in the quality of the act and in the quantity.

6. Let a view be had of the waste, and let there be thereupon an inquest.

And when by the view and the oath of honest and loyal men the waste has been ascertained, let the waste be amended. But in all obligations, and contracts and stipulations, which are contracted by consent and intention, as in conventions, promises, donations, sales, and such like, if a sect be produced and a sect be examined and it only raises a presumption, he concerning whom the complaint is made may be able against the sect of the said party to defend himself by his law, upon doubling at least the persons of the jurors, because when there are a greater number on the side of the defence, their verdict raises a greater presumption. And so the greater presumption overcomes the less. But if the complainant has a proof, as for instance instruments and sealed charters, against proofs of this kind a defence cannot be rested on the law. But if the instrument be gainsayed, the faith of the instrument shall be proved by the country and by witnesses.

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7. Likewise the woman may reply to the charge of waste.

The woman also may answer, that if waste has been committed, it was not committed in her time but in the time of another person, to wit, her husband, or her guardian, or the heir before the assignment of her dower, which if the complainant denies, it shall be inquired into by the country.

8. Each may put themselves

Since therefore it is necessary to hold a view of the waste, when the plaintiff has a sect, and the woman denies the waste, and each has put themselves on the

assumptis secum militibus fieri faciat visum de vasto illo per tale breve, et q xii. milites veniant ad certū diē ad certificandū de vasto illo.

9. Breve de videndo vastum per vicecomitem et patriam, et remittat inquisitionem justiciariis.

Rex vicecom̃ salutē. Præcipimus tibi q assumptis tecum tam militibus quàm aliis liberis libere tenentibus, legalibus, & discretis hominibus de visneto tali, in ꝓpria persona tua accedas ad maneriū tale, quod A. quæ fuit uxor B. tenet in dotem de hæreditate ipsius B. et eisdem hominibus habere facias visum de domibus, boscis, & gardinis ejusdem manerii, tam interiùs, quā exteriùs. Et unde prædictus talis queritur, q prædicta A. contra consuetudinem regni nostri vastum ibi fecit, destructionem et exilium, s. q in uno bosco tot quercus ꝓstravit et vendidit, & etiam domos ꝓstravit, et extra terram quam tenet in dotem domum ædificavit, & p̃terea quòd villanos manumisit, & terras & redditus vendidit & alienavit, & unde prædicta A. dicit quòd de p̃dicto bosco nihil cepit nisi rationabile estoveriū suum, ad ardendū et claudendum, & tot quercus de quibus talia ædificia et talia reparavit. Et per sacramentum xii. ex p̃dictis hominibus, qui melius sciant & velint veritatem dicere diligēter inquiras, q vastū & quod exilium ibi factum fuerit, et in quibus rebus, & quid, et quantum captum fuit in bosco illo, et ad quid, et p quē, et utrum p̃dicta A. vastum ibi fecit postquàm boscus ille devenit in manus suas, vel si alius inde vastum fecit ante tempus suum. Et inquisitionē quā inde feceris scire facies justiciariis nostris, etiam tali die evidēter, distinctè, et apertè, secundum q per sacramentum p̃dictorum xii. hominum facta fuerit, per literas tuas sigillatas, et p quatuor legales

country, let the viscount be enjoined that having taken with him some knights he cause a view to be had of that waste by such a writ, and that twelve knights come on a certain day to certify concerning that waste.

upon an inquest.

9. A writ to view the waste by the viscount and the country, and let him remit the inquest to the justiciaries.

The king to the viscount greeting. We enjoin you that having taken with you certain as well knights as other free freeholders, loyal and discreet men, of that neighbourhood, you go in your proper person to such a manor, which A. who was the wife of B. holds in dower of the inheritance of the said B., and you cause those men to hold a view of the houses, woods, and gardens of the said manor, as well internally as externally. And whereof so-and-so aforesaid complains that the aforesaid A., contrary to the custom of our realm, has caused waste there or destruction and exile, to wit, that in one wood she has felled so many oaks and sold them, and has likewise pulled down houses, and has built a house outside the land which she holds in dower, and besides that she has manumitted villeins, and has sold and alienated lands and rents, and whereupon the aforesaid A. says that she has taken nothing from the said wood but her reasonable estovers, for firing and for fencing, and so many oaks wherewith she has repaired such and such buildings. And by the oath of twelve of the aforesaid men, who know best and are willing to say the truth, do thou make diligent inquiry what waste and what exile has been there caused, and in what things, and what and how much has been taken in that wood, and for what and by whom, and whether the aforesaid A. has caused waste there after the wood has come into her hands, or if another has caused waste there before her time. And certify to our justiciaries the inquest which you have made thereon on such a day evidently, distinctly, and openly, according as it has been made by the oath of the aforesaid twelve men, by your sealed letters and by four loyal and discreet men out of those

& discretos homines, ex illis per quorum sacramētum inquisitionē illā feceris, et habeas ibi &c. Teste &c.

10. Si mulier de vasto convincatur, quæ pœna sequatur.

Si autē in bosco aliquo factum fuerit vastum & destructio, et mulier inde ꝑ inquisitionē convincatur, talis erit ei pœna infligenda, & in tantū erit coarctanda, q de cætero nihil capiat in bosco illo nisi (ꝑ visum forestariorum hæredis) rationabile estoverium suum, et talis servitus illæ imponetur ad pœnā secūdum q ꝓbatur in rotulo de termino S. Michaelis anñ regni regis H. tertio incipiente quarto in comitatu Norff. de Thoma de le Enveyse et Matilda uxore ejus, & similiter de termino P. anñ regni regis H. nono in coñ Norff. de Margeria de Raylie, ubi de cōsilio curię ꝓpter vastū appositus fuit forestarius. Et q forestarius apponi debet ꝓpter vastū et transgressionē mulieris, ꝓbatur in rotulo p̃dicto, et de forestario apponendo fiat tale breve.

11. Breve de apponendo forestario.

Rex vicecoñ salutem. Scias q ꝓpter destructione q facta est in bosco et in terra quam A. de N. tenet in dotē in tali villa de hæreditate B. de N. ꝓvisum est in curia nostra corā justic. nostris, q idem B. apponat forestarium suum ad prædictum boscum custodiendum, ita quòd prædicta A. nō habeat in eodē bosco nisi rationabile estoveriū suū ad ardendū, ædificandū, et claudendū, tantū sup eandem terrā quam ipsa tenet in dotem de hæreditate ipsius B. in eadem villa, & hoc nullo modo nisi ꝑ visum & liberationē forestariorū ipsius B. Si autem in terris, domibus, gardinis vel pasturis incorrigibilis existat, tunc addatur clausula ista: ꝓvisum est etiam in eadem curia nostra q p̃dictus B.

f. 316 b.

by whose oath you have held the inquest, and have there &c. Witness &c.

10. If the woman be convicted of waste, what penalty follows.

But if waste and destruction has been made in any wood, and the woman has been convicted thereof by an inquest, such a penalty shall be inflicted upon her, and to such an extent is she to be constrained, that she shall take nothing more from that wood, except upon the view of the foresters of the heir her reasonable estovers, and let such a servitude be imposed upon her as a penalty, according to what is proved in the roll of St. Michael's term in the third and fourth years of the reign of king Henry, in the county of Norfolk, concerning Thomas de le Enveyse and Matilda his wife, and in like manner in Easter term, in the ninth year of the reign of king Henry in the county of Norfolk, concerning Margery de Raylie, where upon the advice of the court on account of waste a forester was appointed. And that a forester ought to be appointed on account of the waste and trespass of the woman is proved in the aforesaid roll, and for the appointment of a forester let such a writ issue.

11. A writ for appointing a forester.

The king to the viscount greeting. Know thou that on account of the destruction which has been caused in the wood and on the land which A. de N. holds in dower in such a vill of the inheritance of B. de N., it has been provided in our court before our justiciaries that the said B. shall appoint his own forester to protect the aforesaid wood, so that the aforesaid A. shall not have in the same wood anything except her reasonable estovers for burning, building, and fencing only upon so much land which she holds in dower from the inheritance of the said B. in the same vill, and this in no other manner than by the view and delivery of the foresters of the said B. But if she be incorrigible in the lands, houses, gardens and pastures, then let this clause be added: it has also been provided in our said court that the afore-

f. 316 b.

apponat sibi serventē suū ad curam capiēdam, ne eadē A. destructionē faciat in domibus, gardinis, et pasturis, et q̧ non capiat de hominibus ejusdē terræ nisi rationabiles exitus, & servitia, q̃ facere debent et solent. Et ideo tibi p̃cipim⁹ q̧ non impedias p̃dictū B. quin possit ibi apponere forestariū suū, et servientē suū, secundū q̧ prædictū est, ne ꝑ defectu tui inde clamorē audiamus. Teste &c.

12. Refert utrum quis vastum fecerit in proprio vel alieno.

Et refert utrū quis vastū faciat in ꝓprio aut alieno; et est ꝓpriū, et magis ꝓprium, et est alienū et magis alienū. Magis ꝓpriū, ut si quis habeat in fundo suo jus possessionis et ꝓprietatis, in quo si vastū faciat nō erit tale vastū alicui injuriosum, licet sibi damnosum, nisi servitus constituatur ꝑ modum donationis ne possit. Item est ꝓprium, ut si quis teneat ad vitam suam tantum, ubi tenens habuerit liberū tenemētū tantū, et alius ꝓprietatē, et sic utitur tenens quodāmodo in ꝓprio quoad rationabile estoveriū ꝓpter liberū teñtum, & sic non facit vastū nec injuriam, utendo ꝑ mensuram. Sed si mensurā excedat utendo, et capiendo ultra rationabile estoveriū suum, utitur quasi in alieno, et sic erit vastum injuriosū, nisi vastū ita modicū fuerit, ꝓpter q̧ non sit inquisitio facienda, ut de termino S. T. añ regis H. decimoquinto in comitatu Bed. de Petro Peyjure. Et quid debeat adjudicari ad vastū, et quid non, ꝓpter magnitudinē et parvitē, habet q̃libet patria suum modū, constitutionē, et cōsuetudinē. Est etiām quasi

said B. shall appoint his own servant to take care, lest the said A. cause destruction in the houses, gardens, and pastures, and that she shall not exact from the men of the said land any but reasonable outgoings and services, which they ought and are accustomed to furnish. And therefore we enjoin you that you do not impede the said B. from appointing his own forester and his own servant, according to what has been said above, lest from your default we should hear any complaint from that quarter. Witness &c.

12. It is of importance whether a person has committed waste in his own or in another's estate.

And it is of importance whether a person has committed waste in his own or in another's land; and there is one's own simply and one's own in a greater degree, and there is another's simply and another's in a greater degree. One's own in a greater degree, as if one has in one's own estate the right of possession and the right of property, in which if he has caused waste such waste will not be injurious to any one, although damaging to himself, unless a servitude be created by the manner of the donation that he may not be able. Likewise there is one's own, as if a person has for his own life only where the tenant has had the freehold only, and another the property, and so the tenant uses it as if it were in some manner his own as regards reasonable estovers, on account of his freehold, and so he does not cause waste nor injury in using according to measure. But if he exceeds measure in using it and in taking beyond his reasonable estovers, he uses as it were another's, and so there will be injurious waste, unless the waste has been so moderate, that an inquest ought not to be held about it, as in Holy Trinity term in the fifteenth year of king Henry, in the county of Bedford, concerning Peter Peyjure. And what ought to be adjudged waste and what not, on account of its greatness or its littleness, each country has its own measure, constitution, and custom. There is a kind of another's property, as if a person has

alienū, ut si quis fundū habuerit in manu sua ratione custodiæ, in qua quidē non habet nec jus ꝑprietatis, nec jus possessionis, nisi tantum nudum dominium cū possessione, si vastū fecerit, facit vastū quasi in alieno. Et ideo si de vasto convincatur, amittit custodiā et restituet dāna, et det domino regi misericordiam, ꝗ non est in muliere si de dote sua fecerit vastum, quia dotem non amittit, sed custos vel curator ei adjungatur, qui impediat ne faciat, et damna debet refundere. Et est magis alienum, ubi quis, cùm nihil horū habuerit, vastum fecerit in alieno, sine licentia et voluntate eorū quorum res fuerit. Et tale vastum cum sit ita injuriosum, cùm sit quasi roberia, vertitur in novam disseysinā, vel in transgressionem, secundū ꝗ ꝓsumptor dixerit tenementum illud esse suum vel non.

13. Quid est vastum, et quid exilium.

Item de hoc ꝗ dicit vastum et exilium, sciendum ꝗ non sunt referenda ad eundē intellectū, sed vastum et destructio fere idem sunt, quia cōvertibiliter se habent vastū et destructio, et vastum idem est ꝗ destructio, et econverso, & se habent ad omnem destructionem generaliter. Exilium verò dici poterit generaliter, ubi quid sit ad magnam deformitatē curiæ & capitalis mesuagii, ut si quis domos prostraverit et vendiderit, hoc erit ad magnam deformitatem, ut si inhabitatores mansionem habuerint derelictam. Item si arbores et pomaria crescentia in curia, vel circa domos prostraverit, et extirpaverit, quod erit ad grave damnum et maxime deformitatem. f. 317.

in his own hand an estate by reason of guardianship, in which indeed he has not the right of property nor the right of possession, but only the naked dominion with possession, if he has caused waste, he has caused it as it were in another's estate. And accordingly if he be convicted of waste, he loses the custody and shall restore the damages and let him pay to the king an amerciament, which does not take place in the case of a woman, if she commits waste in her dower, because she does not lose her dower, but a guardian or a curator is imposed upon her, who is to prevent her doing it, and she ought to refund the damages. And there is the case of a thing being another's in a greater degree, where a person, when he has none of these things, has caused waste in another's property, without the licence and will of those to whom the thing belongs. And such a waste when it is so injurious, when it is as it were robbery, is turned into novel disseysine, or into trespass, according as the intruder says that the tenement is his own or not.

13. What is waste, and what is exile.

Likewise concerning this which is called waste and exile, it is to be known that they are not to be referred to the same meaning, but waste and destruction are nearly the same, because waste and destruction are convertible, and waste is the same as destruction, and conversely, and they refer to every kind of destruction generally. But exile may be said generally, where anything has been done to the great disfigurement of the court and chief messuage, as if any one has pulled down houses and sold them, this will be to their great disfigurement, as if the inhabitants had their mansion derelict. Likewise if he has cut down trees and orchards growing in the court and has rooted them up, which will be to the grievous damage and great disfigurement of the estate.

f. 317.

Cap. XIX.

1\. Si custos vastum fecerit in alieno, sicut in terra quam tenuit nomine custodiæ, breve ne faciat.

Cum autem custos vastum fecerit in custodia sua quasi in alieno, præcipiatur vicecomiti q̄ non p̄mittat talem vastum facere vel exiliū &c. p̄ tale breve. Rex vic. salutē. Præcipimus tibi quòd non permittas quòd talis vastum faciat, venditionem, vel exiliū, de terris &c. (ut supra) quæ habet in custodia de hæreditate talis in tali villa ad exhæredationem &c. et sic fiat attachiamentum ut superius. Vel sic: Si talis fecerit te securum &c. pone per vadium &c. D. quòd sit tali die ad respondendū B. quæ fuit uxor C. matri B. filiæ & hæredi ipsius C. quare fecit vastum &c. ut supra. Et ita observetur ordo attachiamentorum, ut supra, in actione personali. Et notandū q̄ ad vastum judicari debet, si mulier in dote sua, vel custos in custodia sua, terras, redditus, servos, vel alias res hæreditarias vendiderit, vel alienaverit, vel si servos manumiserit, vel plus æquo talliaverit, p̄ q̄ destruantur. Item si domos prostraverit & alibi inde ædificaverit, vel si eas combusserit, & non casu fortuito. Item si boscum vel gardinum in toto vel in p̄te extirpaverit. Item quicquid inde captum fuerit, datum, venditum, vel abductum, & alibi ædificatum, & quicquid extra terram asportatum fuerit, sed refert utrum magnum fuerit vel modicum, secundum quod supradictum est. Non autem debet ad vastum judicari q̄ captum fuerit ad reparationē domorum utilem & necessariam, cùm per hoc melioretur heredis conditio. Et si quid fiat consimile.

2\. Si custos de vasto

Cùm autem custos vastum faciat in custodia sua & inde convincatur, (non refert utrum ante prohibitionē

Chapter XIX.

1. If a guardian has caused waste in another's estate, as in land which he has held in the name of guardianship, a writ that he should not do it.

But when a guardian has caused waste in his guardianship as if in another's estate, let it be enjoined to the viscount that he should not permit him to make such waste or exile, &c., by a writ of this kind. The king to the viscount greeting. We enjoin you that you should not permit that so-and-so should cause waste, sale, or exile of the lands, &c. (as above), which he holds in guardianship of the inheritance of so-and-so in such a vill, to the disherison, &c., and so let an attachment be made as above: or thus, if so-and-so has given you security, &c., place D. under bail, &c., to be present on such a day to answer to B. who was the wife of C. the mother of B. the daughter and heir of the said C., wherefore he has caused waste, &c., as above. And so let the order of attachments be observed, as above, in a personal action. And it is to be noted that it ought to be adjudged waste, if a woman in her dower, or a guardian in his guardianship, has sold or alienated lands, rents, serfs, or other hereditary things, or if he has manumitted serfs, or has taxed them more than was equitable, whereby they are destroyed. Likewise if he has pulled down houses, and has built elsewhere with the materials, or if he has burnt them down, and not by a fortuitous accident. Likewise if has rooted up a wood or a garden in entirety or in part. Likewise whatever has been taken therefrom, given away, sold, or led away, or built elsewhere, and whatever has been carried away beyond the estate, but it matters whether it was much or little, according to what has been said above. But it ought not to be adjudged as waste what has been taken for the useful and necessary repairs of houses, since the condition of the heir is ameliorated thereby. And if any thing of a similiar kind has been done.

2. If a guardian has

But when a guardian has caused waste in his guardianship and has been convicted thereof (it matters not

convincatur, quæ pœna sequatur.

vel post) talem pœnam incurret, s. inprimis amittet custodiam & in misericordia domini regis remanebit, et damna restaurabit. Et quòd ita sit, inveniri poterit inter placita quæ sequuntur regem anno regni sui vicesimo de Johanne de Daco & filia & hærede Johannis de Bray coram I. de Lacy in comitatu Lync. & W. de Ralegh.

Cap. XX.

1. Mortua muliere, ad quem revertitur dos.

Mortua muliere seysita de dote sua, statim revertatur dos sua ad hæredem proprietarium, vel ad alium qui fuerit loco hæredis, nisi forte hæres dotem in vita mulieris alienaverit, vel donationem fecerit vel venditionem de duabus partibus, & postea attornaverit emptori, vel donatorio[1] servitium mulieris, & attornaverit eam quod sit intendens donatorio vel emptori sicut waranto de dote sua, quo casu si attornaverit se et servitium suū, sequunt̃ dos et seisina sua post mortē ejus jus et ꝑprietatē q̃ sūt in donatorio vel emptore. Item nō revertit̃ ad hæredē (ut supra dictū est) in

f. 317 b.

parte, dos post mortem mulieris ubi mulier dotem nominatam vel non nominatam recuperaverit versus hæredem, qui terram warantizavit versus mulierem, & mulier recuperaverit, & hæres nihil habeat de quo escambiū facere possit ante mortem mulieris. Et ideo per judicium revertetur dos ad donatorium vel ad emptorem, & non ad hæredem, propter jus merum q ipsi habent. Si autem cùm hæres donationem fecerit de duobus partibus, & servitium mulieris attornaverit, & hæres qui dedit & vendidit se intruserit in terram illam contra chartam & donum & factum ꝑprium, consulitur emptòri sive donatorio per tale breve de ingressu.

[1] "donatario," MS. Rawl. C. 160, hic et alibi pro "donatorio."

whether before or after a prohibition), he shall incur a penalty, to wit, he shall lose the guardianship, and shall remain at the mercy of the lord the king, and shall restore the damages. And that it is so may be found in the pleas which follow the king in the twentieth year of his reign, concerning John de Daco and the daughter and heiress of John de Bray, before J. de Lacy, in the county of Lyncoln, and William de Ralegh.

been convicted of waste, what penalty follows.

Chapter XX.

1. To whom the dower reverts upon the death of the woman.

Upon the death of the woman who is seysed of her dower, let her dower revert forthwith to the proprietary heir, or to another person who is in the place of an heir, unless by chance the heir has alienated the dower in the lifetime of the woman, or has made a donation or a sale of the two thirds, and has afterwards attourned to the purchaser or to the donee the service of the woman, or has attourned her that she be intendant upon the donee or purchaser as a warrantor for her dower, in which case if she has attourned herself and her service, her dower and her seysine follow after her death the right and proprietorship which are in the donee or the purchaser. Likewise the dower does not revert to the heir as above said in part after the death of the woman where the woman has recovered a specified or an unspecified dower against the heir, who has warranted the land against the woman, and the woman has recovered her dower, and the heir has nothing wherewith he can make compensation before the death of the woman. And therefore the dower will revert by a judgment to the donee or the purchaser, and not to the heir, on account of the absolute right which they have. But if when the heir has made a donation of two thirds, and has attourned the service of the woman, and the heir, who has given and sold it, has intruded himself into that land contrary to a charter and a donation and his own act, aid is given to the purchaser or to the donee by a writ of this kind.

f. 317 b.

Si hæres donationem fecerit in vita mulieris, et attornaverit mulierem donatorio.

Rex vicecom̃ salutem. Præcipe A. quòd justè & sine dilatione reddat B.. tantam terram cum ptinentiis in tali villa, quam clamat esse jus suum ratione doni quod idem A. ei fecit p chartam suam, ut idē B. dicit, in quam idē A. non habet ingressum nisi p hoc quòd se intrusit in terrā illam contra chartam & donum suum, post mortem talis mulieris, qui [1] terram illam tenuit in dotem de prædicto B. & servitium ei indé fecit tota vita sua, & quod ad prædictum B. reverti debuit post mortem prædictæ mulieris ratione doni ipsius A. ut idē B. dicit, vel aliter si donator obierit & donatorius, & extraneus se intruserit, & hæres donatorii petierit fiat ei tale breve

3. De dote data vivente uxore quæ dotem tenuit, et cujus servitium attornatum fuit donatorio, et sic non ad hæredem.

Rex vicecom̃ salutē. Præcipe A. q justè & sine dilatione reddat B. tantam terram cum ptinentiis in tali villa, quā clamat esse jus suum ratione doni quod C. pater D. fecit E. patri prædicti B. cujus hæres ipse est, & in quam idem A. non habet ingressum nisi p talem mulierē, quæ se intruserit in terram illam post mortem talis alterius mulieris, q̃ terrā illam tenuit in dotē de E. patre ipsius B. cujus hæres ipse est, & servitium suū ei inde fecit tota vita sua, & quæ ad p̃dictū B. reverti debet post mortem p̃dictæ mulieris ratione doni q prædictus C. ei inde fecit ut idem A. dicit. Et nisi fecerit &c. et sic revertitur dos.

FINIS TRACTATÛS SEXTI LIBRI QUARTI.

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[1] "quæ," MS. Rawl. C. 160. et Reg. 6. E. xv.

The king to the viscount greeting. Enjoin A. that justly and without delay he should restore to B. so much land with its appurtenances in such a vill, which he claims to be his own by reason of a donation which the said A. made to him by his charter, as the said B. says, into which A. has not ingress excepting so far as he has intruded himself into that land contrary to his charter and donation after the death of the aforesaid woman who held that land as her dower from the aforesaid B. and did service to him thereof during the whole of her lifetime, and which ought to revert to B. aforesaid after the death of the said woman by reason of the donation on the part of said A., as the said B. says, or otherwise if the donor has died and the donee, and a stranger has intruded himself, and the heir of the donee has made a claim, let a writ of this kind be issued to him.

2. If the heir has made a donation in the lifetime of the woman and has attourned the woman to the donee.

The king to the viscount greeting. Enjoin A. that justly and without delay he should restore to B. so much land with its appurtenances in such a vill, which he claims to be his own by reason of a donation which C. the father of D. made to E. the father of the aforesaid B., whose heir the said B. is, and into which the said A. has no ingress except through such woman, who has intruded herself into that land after the death of the said other woman, who held that land as dower from E. the father of the said B., whose heir the said B. is, and did service to him on that account during the whole of her life, and which ought to revert to the said B. after the death of the aforesaid woman by reason of the donation which the said C. made to him thereof as the said A. says. And unless he shall have done so &c., and so the dower reverts.

3. Concerning dower given away during the lifetime of the woman who held the dower, and whose service has been attourned to the donee, and so not to the heir.

HERE ENDS THE SIXTH TREATISE OF THE FOURTH BOOK.

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Vol. VII.—1667.

Seven volumes of this Calendar, of the period between 1660 and 1667, have been published.

CALENDAR OF HOME OFFICE PAPERS OF THE REIGN OF GEORGE III., preserved in Her Majesty's Public Record Office. *Edited by* JOSEPH REDINGTON, Esq., 1878–1879.

Vol. I.—1760 (25 Oct.)–1765. | Vol. II.—1766–1769.

These are the first two volumes of the modern series of Domestic Papers, commencing with the accession of George III.

CALENDAR OF STATE PAPERS relating to SCOTLAND, preserved in Her Majesty's Public Record Office. *Edited by* MARKHAM JOHN THORPE, Esq., of St. Edmund Hall, Oxford. 1858.

Vol. I., the Scottish Series, of the Reigns of Henry VIII., Edward VI., Mary, and Elizabeth, 1509–1589.

Vol. II., the Scottish Series, of the Reign of Elizabeth, 1589–1603; an Appendix to the Scottish Series, 1543–1592; and the State Papers relating to Mary Queen of Scots during her Detention in England, 1568–1587.

These two volumes of State Papers relate to Scotland, and embrace the period between 1509 and 1603. In the second volume are notices of the State Papers relating to Mary Queen of Scots.

Calendar of Documents relating to Ireland, preserved in Her Majesty's Public Record Office, London. *Edited by* Henry Savage Sweetman, Esq., B.A., Trinity College, Dublin, Barrister-at-Law (Ireland). 1875–1879.

Vol. I.—1171–1251.
Vol. II.—1252–1284.
Vol. III.—1285–1292.

These volumes contain a Calendar of all documents relating to Ireland, preserved in the Public Record Office, London; the work is to be continued to the end of the reign of Henry VII.

Calendar of State Papers relating to Ireland, of the Reigns of Henry VIII., Edward VI., Mary, and Elizabeth, preserved in Her Majesty's Public Record Office. *Edited by* Hans Claude Hamilton, Esq., F.S.A. 1860–1877.

Vol. I.—1509–1573.
Vol. II.—1574–1585.
Vol. III.—1586–1588.

The above have been published under the editorship of Mr. Hans Claude Hamilton.

Calendar of State Papers relating to Ireland, of the Reign of James I., preserved in Her Majesty's Public Record Office, and elsewhere. *Edited by* the Rev. C. W. Russell, D.D., and John P. Prendergast, Esq., Barrister-at-Law. 1872–1880.

Vol. I.—1603–1606.
Vol. II.—1606–1608.
Vol. III.—1608–1610.
Vol. IV.—1611–1614.
Vol. V.—1615–1625.

This series is in continuation of the Irish State Papers commencing with the reign of Henry VIII.; but, for the reign of James I., the Papers are not confined to those in the Public Record Office, London.

Calendar of State Papers, Colonial Series, preserved in Her Majesty's Public Record Office, and elsewhere. *Edited by* W. Noel Sainsbury, Esq. 1860–1880.

Vol. I.—America and West Indies, 1574–1660.
Vol. II.—East Indies, China, and Japan, 1513–1616.
Vol. III.—East Indies, China, and Japan, 1617–1621.
Vol. IV.—East Indies, China, and Japan, 1622–1624.
Vol. V.—America and West Indies, 1661–1668.

These volumes include an analysis of early Colonial Papers in the Public Record Office, the India Office, and the British Museum.

Calendar of Letters and Papers, Foreign and Domestic, of the Reign of Henry VIII., preserved in Her Majesty's Public Record Office, the British Museum, &c. *Edited by* J. S. Brewer, M.A., Professor of English Literature, King's College, London, (Vols. I.–IV.); and *by* James Gairdner, Esq., (Vol. V.) 1862–1880.

Vol. I.—1509–1514.
Vol. II. (in Two Parts)—1515–1518.
Vol. III. (in Two Parts)—1519–1523.
Vol. IV.—Introduction.
Vol. IV., Part 1.—1524–1526.
Vol. IV., Part 2.—1526–1528.
Vol. IV., Part 3.—1529–1530.
Vol. V.—1531–1532.

These volumes contain summaries of all State Papers and Correspondence relating to the reign of Henry VIII., in the Public Record Office, of those formerly in the State Paper Office, in the British Museum, the Libraries of Oxford and Cambridge, and other Public Libraries; and of all letters that have appeared in print in the works of Burnet, Strype, and others. Whatever authentic original material exists in England relative to the religious, political, parliamentary, or social history of the country during the reign of Henry VIII., whether despatches of ambassadors, or proceedings of the army, navy, treasury, or ordnance, or records of Parliament, appointments of officers, grants from the Crown, &c., will be found calendared in these volumes.

CALENDAR OF STATE PAPERS, FOREIGN SERIES, OF THE REIGN OF EDWARD VI., preserved in Her Majesty's Public Record Office. 1547–1553. *Edited by* W. B. TURNBULL, Esq., of Lincoln's Inn, Barrister-at-Law, &c. 1861.

CALENDAR OF STATE PAPERS, FOREIGN SERIES, OF THE REIGN OF MARY, preserved in Her Majesty's Public Record Office. 1553–1558. *Edited by* W. B. TURNBULL, Esq., of Lincoln's Inn, Barrister-at-Law, &c. 1861.

The two preceding volumes exhibit the negotiations of the English ambassadors with the courts of the Emperor Charles V. of Germany, of Henry II. of France, and of Philip II. of Spain. The affairs of several of the minor continental states also find various incidental illustrations of much interest.

A valuable series of Papers descriptive of the circumstances which attended the loss of Calais merits a special notice; while the progress of the wars in the north of France, into which England was dragged by her union with Spain, is narrated at some length. The domestic affairs of England are of course passed over in these volumes, which treat only of its relations with foreign powers.

CALENDAR OF STATE PAPERS, FOREIGN SERIES, OF THE REIGN OF ELIZABETH, preserved in Her Majesty's Public Record Office, &c. *Edited by* the Rev. JOSEPH STEVENSON, M.A., of University College, Durham, (Vols. I.–VII.), and ALLAN JAMES CROSBY, Esq., M.A., Barrister-at-Law, (Vols. VIII.–XI.) 1863–1880.

Vol. I.—1558–1559.
Vol. II.—1559–1560.
Vol. III.—1560–1561.
Vol. IV.—1561–1562.
Vol. V.—1562.
Vol. VI.—1563.
Vol. VII.—1564–1565.
Vol. VIII.—1566–1568.
Vol. IX.—1569–1571.
Vol. X.—1572–1574.
Vol. XI.—1575–1577.

These volumes contain a Calendar of the Foreign Correspondence during the early portion of the reign of Queen Elizabeth, deposited in the Public Record Office, &c. They illustrate not only the external but also the domestic affairs of Foreign Countries during that period.

CALENDAR OF TREASURY PAPERS, preserved in Her Majesty's Public Record Office. *Edited by* JOSEPH REDINGTON, Esq. 1868–1879.

Vol. I.—1557–1696.
Vol. II.—1697–1702.
Vol. III.—1702–1707.
Vol. IV.—1708–1714.

The above Papers connected with the affairs of the Treasury comprise petitions, reports, and other documents relating to services rendered to the State, grants of money and pensions, appointments to offices, remissions of fines and duties, &c. They illustrate civil and military events, finance, the administration in Ireland and the Colonies, &c., and afford information nowhere else recorded.

CALENDAR OF THE CAREW PAPERS, preserved in the Lambeth Library. *Edited by* J. S. BREWER, M.A., Professor of English Literature, King's College, London; and WILLIAM BULLEN, Esq. 1867–1873.

Vol. I.—1515–1574.
Vol. II.—1575–1588.
Vol. III.—1589–1600.
Vol. IV.—1601–1603.
Vol. V.—Book of Howth; Miscellaneous.
Vol. VI.—1603–1624.

The Carew Papers relating to Ireland, deposited in the Lambeth Library, are unique, and of great importance. The Calendar cannot fail to be welcome to all students of Irish history.

CALENDAR OF LETTERS, DESPATCHES, AND STATE PAPERS, relating to the Negotiations between England and Spain, preserved in the Archives at Simancas, and elsewhere. *Edited by* G. A. BERGENROTH. 1862–1868.

Vol. I.—Hen. VII.—1485–1509.
Vol. II.—Hen. VIII.—1509–1525.
Supplement to Vol. I. and Vol. II.

Mr. Bergenroth was engaged in compiling a Calendar of the Papers relating to England preserved in the archives of Simancas in Spain, and the corresponding portion removed from Simancas to Paris. Mr. Bergenroth also visited Madrid, and examined the Papers there, bearing on the reign of Henry VIII. The first volume contains the Spanish Papers of the reign of Henry VII.; the second volume, those of the first portion of the reign of Henry VIII. The Supplement contains new information relating to the private life of Queen Katharine of England; and to the projected marriage of Henry VII. with Queen Juana, widow of King Philip of Castile, and mother of the Emperor Charles V.

Calendar of Letters, Despatches, and State Papers, relating to the Negotiations between England and Spain, preserved in the Archives at Simancas, and elsewhere. *Edited by* Don Pascual de Gayangos. 1873–1879.

Vol. III., Part 1.—Hen. VIII.—1525–1526.
Vol. III., Part 2.—Hen. VIII.—1527–1529.
Vol. IV., Part 1.—Hen. VIII.—1529–1530.

Upon the death of Mr. Bergenroth, Don Pascual de Gayangos was appointed to continue the Calendar of the Spanish State Papers. He has pursued a similar plan to that of his predecessor, but has been able to add much valuable matter from Brussels and Vienna, with which Mr. Bergenroth was unacquainted.

Calendar of State Papers and Manuscripts, relating to English Affairs, preserved in the Archives of Venice, &c. *Edited by* Rawdon Brown, Esq. 1864–1877.

Vol. I.—1202–1509.
Vol. II.—1509–1519.
Vol. III.—1520–1526.
Vol. IV.—1527–1533.
Vol. V.—1534–1554.
Vol. VI., Part I.—1555–1556.

Mr. Rawdon Brown's researches have brought to light a number of valuable documents relating to various periods of English history; his contributions to historical literature are of the most interesting and important character.

Syllabus, in English, of Rymer's Fœdera. *By* Sir Thomas Duffus Hardy, D.C.L., Deputy Keeper of the Public Records. Vol. I.—Will. I.–Edw. III.; 1066–1377. Vol. II.—Ric. II.–Chas. II.; 1377–1654. 1869–1873.

The "Fœdera," or "Rymer's Fœdera," is a collection of miscellaneous documents illustrative of the History of Great Britain and Ireland, from the Norman Conquest to the reign of Charles II. Several editions of the "Fœdera" have been published, and the present Syllabus was undertaken to make the contents of this great National Work more generally known.

Report of the Deputy Keeper of the Public Records and the Rev. J. S. Brewer to the Master of the Rolls, upon the Carte and Carew Papers in the Bodleian and Lambeth Libraries. 1864. *Price 2s. 6d.*

Report of the Deputy Keeper of the Public Records to the Master of the Rolls, upon the Documents in the Archives and Public Libraries of Venice. 1866. *Price 2s. 6d.*

In the Press.

Syllabus, in English, of Rymer's Fœdera. *By* Sir Thomas Duffus Hardy, D.C.L., Deputy Keeper of the Public Records. Vol. III.—Appendix and Index.

Calendar of State Papers and Manuscripts, relating to English Affairs, preserved in the Archives of Venice, &c. *Edited by* Rawdon Brown, Esq. Vol. VI., Part II.—1556–1558.

Calendar of Home Office Papers of the Reign of George III., preserved in Her Majesty's Public Record Office. *Edited by* Richard Arthur Roberts, Esq., Barrister-at-Law. Vol. III.—1770–1772.

Calendar of Letters, Despatches, and State Papers, relating to the Negotiations between England and Spain, preserved in the Archives at Simancas, and elsewhere. *Edited by* Don Pascual de Gayangos. Vol. IV., Part 2.—Hen. VIII.

Calendar of State Papers relating to Ireland, of the Reign of Elizabeth, preserved in Her Majesty's Public Record Office. *Edited by* Hans Claude Hamilton, Esq., F.S.A. Vol. IV.—1588–1590.

Calendar of Documents relating to Ireland, preserved in Her Majesty's Public Record Office, London. *Edited by* Henry Savage Sweetman, Esq., B.A., Trinity College, Dublin, Barrister-at-Law (Ireland). Vol. IV. —1293–1301.

Calendar of Letters and Papers, Foreign and Domestic, of the Reign of Henry VIII., preserved in Her Majesty's Public Record Office, the British Museum, &c. *Edited by* James Gairdner, Esq. Vol. VI. —1533, &c.

Calendar of State Papers, Domestic Series, during the Commonwealth, preserved in Her Majesty's Public Record Office. *Edited by* Mary Anne Everett Green. Vol. VIII.—1654–5.

In Progress.

Calendar of State Papers, Colonial Series, preserved in Her Majesty's Public Record Office, and elsewhere. *Edited by* W. Noel Sainsbury, Esq. Vol. VI.—East Indies, 1625, &c. Vol. VII.—America and West Indies, 1669, &c.

Calendar of Treasury Papers, preserved in Her Majesty's Public Record Office. *Edited by* Joseph Redington, Esq. Vol. V.—1714, &c.

Calendar of Home Office Papers of the Reign of George III., preserved in Her Majesty's Public Record Office. *Edited by* Richard Arthur Roberts, Esq., Barrister-at-Law. Vol. IV.—1773, &c.

Calendar of State Papers, Foreign Series, of the reign of Elizabeth, preserved in Her Majesty's Public Record Office. *Edited by* Allan James Crosby, Esq., M.A., Barrister-at-Law. Vol. XII.—1577.

Calendar of State Papers, Domestic Series, of the Reign of Charles I., preserved in Her Majesty's Public Record Office. *Edited by* William Douglas Hamilton, Esq., F.S.A. Vol. XVII.—1640.

THE CHRONICLES AND MEMORIALS OF GREAT BRITAIN AND IRELAND DURING THE MIDDLE AGES.

[ROYAL 8vo. half-bound. *Price* 10*s.* each Volume or Part.]

On 25 July 1822, the House of Commons presented an address to the Crown, stating that the editions of the works of our ancient historians were inconvenient and defective; that many of their writings still remained in manuscript, and, in some cases, in a single copy only. They added, "that an "uniform and convenient edition of the whole, published under His Majesty's "royal sanction, would be an undertaking honourable to His Majesty's reign, "and conducive to the advancement of historical and constitutional know- "ledge; that the House therefore humbly besought His Majesty, that He "would be graciously pleased to give such directions as His Majesty, in His "wisdom, might think fit, for the publication of a complete edition of the "ancient historians of this realm, and assured His Majesty that whatever "expense might be necessary for this purpose would be made good."

The Master of the Rolls, being very desirous that effect should be given to the resolution of the House of Commons, submitted to Her Majesty's Treasury in 1857 a plan for the publication of the ancient chronicles and memorials of the United Kingdom, and it was adopted accordingly. In selecting these works, it was considered right, in the first instance, to give preference to those of which the manuscripts were unique, or the materials of which would help to fill up blanks in English history for which no satisfactory and authentic information hitherto existed in any accessible form. One great object the Master of the Rolls had in view was to form a *corpus historicum* within reasonable limits, and which should be as complete as possible. In a subject of so vast a range, it was important that the historical student should be able to select such volumes as conformed with his own peculiar tastes and studies, and not be put to the expense of purchasing the whole collection; an inconvenience inseparable from any other plan than that which has been in this instance adopted.

Of the Chronicles and Memorials, the following volumes have been published. They embrace the period from the earliest time of British history down to the end of the reign of Henry VII.

1. THE CHRONICLE OF ENGLAND, by JOHN CAPGRAVE. *Edited by* the Rev. F. C. HINGESTON, M.A., of Exeter College, Oxford. 1858.

   Capgrave was prior of Lynn, in Norfolk, and provincial of the order of the Friars Hermits of England shortly before the year 1464. His Chronicle extends from the creation of the world to the year 1417. As a record of the language spoken in Norfolk (being written in English), it is of considerable value.

2. CHRONICON MONASTERII DE ABINGDON. Vols. I. and II. *Edited by* the Rev. JOSEPH STEVENSON, M.A., of University College, Durham, and Vicar of Leighton Buzzard. 1858.

   This Chronicle traces the history of the great Benedictine monastery of Abingdon in Berkshire, from its foundation by King Ina of Wessex, to the reign of Richard I., shortly after which period the present narrative was drawn up by an inmate of the establishment. The author had access to the title-deeds of the house; and incorporates into his history various charters of the Saxon kings, of great importance as illustrating not only the history of the locality but that of the kingdom. The work is printed for the first time.

3. Lives of Edward the Confessor. I.—La Estoire de Seint Aedward le Rei. II.—Vita Beati Edvardi Regis et Confessoris. III.—Vita Æduuardi Regis qui apud Westmonasterium requiescit. *Edited by* Henry Richards Luard, M.A., Fellow and Assistant Tutor of Trinity College, Cambridge. 1858.

   The first is a poem in Norman French, containing 4,686 lines, addressed to Alianor, Queen of Henry III., and probably written in the year 1245, on the occasion of the restoration of the church of Westminster. Nothing is known of the author. The second is an anonymous poem, containing 536 lines, written between the years 1440 and 1450, by command of Henry VI., to whom it is dedicated. It does not throw any new light on the reign of Edward the Confessor, but is valuable as a specimen of the Latin poetry of the time. The third, also by an anonymous author, was apparently written for Queen Edith, between the years 1066 and 1074, during the pressure of the suffering brought on the Saxons by the Norman conquest. It notices many facts not found in other writers, and some which differ considerably from the usual accounts.

4. Monumenta Franciscana; scilicet, I.—Thomas de Eccleston de Adventu Fratrum Minorum in Angliam. II.—Adæ de Marisco Epistolæ. III.—Registrum Fratrum Minorum Londoniæ. *Edited by* J. S. Brewer, M.A., Professor of English Literature, King's College, London. 1858.

   This volume contains original materials for the history of the settlement of the order of Saint Francis in England, the letters of Adam de Marisco, and other papers connected with the foundation and diffusion of this great body. It has been the aim of the editor to collect whatever historical information could be found in this country, towards illustrating a period of the national history for which only scanty materials exist. None of these have been before printed.

5. Fasciculi Zizaniorum Magistri Johannis Wyclif cum Tritico. Ascribed to Thomas Netter, of Walden, Provincial of the Carmelite Order in England, and Confessor to King Henry the Fifth. *Edited by* the Rev. W. W. Shirley, M.A., Tutor and late Fellow of Wadham College, Oxford. 1858.

   This work derives its principal value from being the only contemporaneous account of the rise of the Lollards. When written the disputes of the schoolmen had been extended to the field of theology, and they appear both in the writings of Wycliff and in those of his adversaries. Wycliff's little bundles of tares are not less metaphysical than theological, and the conflict between Nominalists and Realists rages side by side with the conflict between the different interpreters of Scripture. The work gives a good idea of the controversies at the end of the 14th and the beginning of the 15th centuries.

6. The Buik of the Croniclis of Scotland; or, A Metrical Version of the History of Hector Boece; by William Stewart. Vols. I., II., and III. *Edited by* W. B. Turnbull, Esq., of Lincoln's Inn, Barrister-at-Law. 1858.

   This is a metrical translation of a Latin Prose Chronicle, and was written in the first half of the 16th century. The narrative begins with the earliest legends, and ends with the death of James I. of Scotland, and the "evil ending of the traitors that slew him." Strict accuracy of statement is not to be looked for in such a work as this; but the stories of the colonization of Spain, Ireland, and Scotland are interesting if not true; and the chronicle is valuable as a reflection of the manners, sentiments, and character of the age in which it was composed. The peculiarities of the Scottish dialect are well illustrated in this metrical version, and the student of language will find ample materials for comparison with the English dialects of the same period, and with modern lowland Scotch.

7. Johannis Capgrave Liber de Illustribus Henricis. *Edited by* the Rev. F. C. Hingeston, M.A., of Exeter College, Oxford. 1858.

   This work is dedicated to Henry VI. of England, who appears to have been, in the author's estimation, the greatest of all the Henries. It is divided into three

distinct parts, each having its own separate dedication. The first part relates only to the history of the Empire, and extends from the election of Henry I., the Fowler, to the end of the reign of the Emperor Henry VI. The second part is devoted to English history, and extends from the accession of Henry I. in the year 1100, to the year 1446, which was the twenty-fourth year of the reign of King Henry VI. The third part contains the lives of illustrious men who have borne the name of Henry in various parts of the world.

Capgrave was born in 1393, in the reign of Richard II., and lived during the Wars of the Roses, for the history of which period his work is of some value.

8. Historia Monasterii S. Augustini Cantuariensis, by Thomas of Elmham, formerly Monk and Treasurer of that Foundation. *Edited by* Charles Hardwick, M.A., Fellow of St. Catharine's Hall, and Christian Advocate in the University of Cambridge. 1858.

This history extends from the arrival of St. Augustine in Kent until 1191. Prefixed is a chronology as far as 1418, which shows in outline what was to have been the character of the work when completed. The only copy known is in the possession of Trinity Hall, Cambridge. The author was connected with Norfolk, and most probably with Elmham, whence he derived his name.

9. Eulogium (Historiarum sive Temporis): Chronicon ab Orbe condito usque ad Annum Domini 1366; a Monacho quodam Malmesbiriensi exaratum. Vols. I., II., and III. *Edited by* F. S. Haydon, Esq., B.A. 1858–1863.

This is a Latin Chronicle extending from the Creation to the latter part of the reign of Edward III., and written by a monk of the Abbey of Malmesbury, in Wiltshire, about the year 1367. A continuation, carrying the history of England down to the year 1413, was added in the former half of the fifteenth century by an author whose name is not known. The original Chronicle is divided into five books, and contains a history of the world generally, but more especially of England to the year 1366. The continuation extends the history down to the coronation of Henry V. The Eulogium itself is chiefly valuable as containing a history, by a contemporary, of the period between 1356 and 1366. The notices of events appear to have been written very soon after their occurrence. Among other interesting matter, the Chronicle contains a diary of the Poitiers campaign, evidently furnished by some person who accompanied the army of the Black Prince. The continuation of the Chronicle is also the work of a contemporary, and gives a very interesting account of the reigns of Richard II. and Henry IV. It is believed to be the earliest authority for the statement that the latter monarch died in the Jerusalem Chamber at Westminster.

10. Memorials of Henry the Seventh: Bernardi Andreæ Tholosatis Vita Regis Henrici Septimi; necnon alia quædam ad eundem Regem spectantia. *Edited by* James Gairdner, Esq. 1858.

The contents of this volume are—(1) a life of Henry VII., by his poet laureate and historiographer, Bernard André, of Toulouse, with some compositions in verse, of which he is supposed to have been the author; (2) the journals of Roger Machado during certain embassies on which he was sent by Henry VII. to Spain and Brittany, the first of which had reference to the marriage of the King's son, Arthur, with Catharine of Arragon; (3) two curious reports by envoys sent to Spain in the year 1505 touching the succession to the Crown of Castile, and a project of marriage between Henry VII. and the Queen of Naples; and (4) an account of Philip of Castile's reception in England in 1506. Other documents of interest in connexion with the period are given in an appendix.

11. Memorials of Henry the Fifth. I.—Vita Henrici Quinti, Roberto Redmanno auctore. II.—Versus Rhythmici in laudem Regis Henrici Quinti. III.—Elmhami Liber Metricus de Henrico V. *Edited by* Charles A. Cole, Esq. 1858.

This volume contains three treatises which more or less illustrate the history of the reign of Henry V., viz.: A Life by Robert Redman; a Metrical Chronicle by Thomas Elmham, prior of Lenton, a contemporary author; Versus Rhythmici, written apparently by a monk of Westminster Abbey, who was also a contemporary of Henry V. These works are printed for the first time.

12. MUNIMENTA GILDHALLÆ LONDONIENSIS; Liber Albus, Liber Custumarum, et Liber Horn, in archivis Gildhallæ asservati. Vol. I., Liber Albus. Vol. II. (in Two Parts), Liber Custumarum. Vol. III. Translation of the Anglo-Norman Passages in Liber Albus, Glossaries, Appendices, and Index. *Edited by* HENRY THOMAS RILEY, Esq., M.A., Barrister-at-Law. 1859–1862.

The manuscript of the *Liber Albus*, compiled by John Carpenter, Common Clerk of the City of London in the year 1419, a large folio volume, is preserved in the Record Room of the City of London. It gives an account of the laws, regulations, and institutions of that City in the twelfth, thirteenth, fourteenth, and early part of the fifteenth centuries.

The *Liber Custumarum* was compiled probably by various hands in the early part of the fourteenth century during the reign of Edward II. The manuscript, a folio volume, is also preserved in the Record Room of the City of London, though some portion in its original state, borrowed from the City in the reign of Queen Elizabeth and never returned, forms part of the Cottonian MS. Claudius D. II. in the British Museum. It also gives an account of the laws, regulations, and institutions of the City of London in the twelfth, thirteenth, and early part of the fourteenth centuries.

13. CHRONICA JOHANNIS DE OXENEDES. *Edited by* Sir HENRY ELLIS, K.H. 1859.

Although this Chronicle tells of the arrival of Hengist and Horsa in England in the year 449, yet it substantially begins with the reign of King Alfred, and comes down to the year 1292, where it ends abruptly. The history is particularly valuable for notices of events in the eastern portions of the kingdom which are not to be elsewhere obtained, and some curious facts are mentioned relative to the floods in that part of England, which are confirmed in the Friesland Chronicle of Anthony Heinrich, pastor of the Island of Mohr.

14. A COLLECTION OF POLITICAL POEMS AND SONGS RELATING TO ENGLISH HISTORY, FROM THE ACCESSION OF EDWARD III. TO THE REIGN OF HENRY VIII. Vols. I. and II. *Edited by* THOMAS WRIGHT, Esq., M.A. 1859–1861.

These Poems are perhaps the most interesting of all the historical writings of the period, though they cannot be relied on for accuracy of statement. They are various in character; some are upon religious subjects, some may be called satires, and some give no more than a court scandal; but as a whole they present a very fair picture of society, and of the relations of the different classes to one another. The period comprised is in itself interesting, and brings us, through the decline of the feudal system, to the beginning of our modern history. The songs in old English are of considerable value to the philologist.

15. The "OPUS TERTIUM," "OPUS MINUS," &c., of ROGER BACON. *Edited by* J. S. BREWER, M.A., Professor of English Literature, King's College, London. 1859.

This is the celebrated treatise—never before printed—so frequently referred to by the great philosopher in his works. It contains the fullest details we possess of the life and labours of Roger Bacon: also a fragment by the same author, supposed to be unique, the "*Compendium Studii Theologiæ.*"

16. BARTHOLOMÆI DE COTTON, MONACHI NORWICENSIS, HISTORIA ANGLICANA; 449–1298: necnon ejusdem Liber de Archiepiscopis et Episcopis Angliæ. *Edited by* HENRY RICHARDS LUARD, M.A., Fellow and Assistant Tutor of Trinity College, Cambridge. 1859.

The author, a monk of Norwich, has here given us a Chronicle of England from the arrival of the Saxons in 449 to the year 1298, in or about which year it appears that he died. The latter portion of this history (the whole of the reign of Edward I. more especially) is of great value, as the writer was contemporary with the events which he records. An Appendix contains several illustrative documents connected with the previous narrative.

17. Brut y Tywysogion; or, The Chronicle of the Princes of Wales. *Edited by* the Rev. John Williams ab Ithel, M.A. 1860.

This work, also known as "The Chronicle of the Princes of Wales," has been attributed to Caradoc of Llancarvan, who flourished about the middle of the twelfth century. It is written in the ancient Welsh language, begins with the abdication and death of Caedwala at Rome, in the year 681, and continues the history down to the subjugation of Wales by Edward I., about the year 1282.

18. A Collection of Royal and Historical Letters during the Reign of Henry IV. 1399–1404. *Edited by* the Rev. F. C. Hingeston, M.A., of Exeter College, Oxford. 1860.

This volume, like all the others in the series containing a miscellaneous selection of letters, is valuable on account of the light it throws upon biographical history, and the familiar view it presents of characters, manners, and events. The period requires much elucidation; to which it will materially contribute.

19. The Repressor of over much Blaming of the Clergy. By Reginald Pecock, sometime Bishop of Chichester. Vols. I. and II. *Edited by* Churchill Babington, B.D., Fellow of St. John's College, Cambridge. 1860.

The "Repressor" may be considered the earliest piece of good theological disquisition of which our English prose literature can boast. The author was born about the end of the fourteenth century, consecrated Bishop of St. Asaph in the year 1444, and translated to the see of Chichester in 1450. While Bishop of St. Asaph, he zealously defended his brother prelates from the attacks of those who censured the bishops for their neglect of duty. He maintained that it was no part of a bishop's functions to appear in the pulpit, and that his time might be more profitably spent, and his dignity better maintained, in the performance of works of a higher character. Among those who thought differently were the Lollards, and against their general doctrines the "Repressor" is directed. Pecock took up a position midway between that of the Roman Church and that of the modern Anglican Church; but his work is interesting chiefly because it gives a full account of the views of the Lollards and of the arguments by which they were supported, and because it assists us to ascertain the state of feeling which ultimately led to the Reformation. Apart from religious matters, the light thrown upon contemporaneous history is very small, but the "Repressor" has great value for the philologist, as it tells us what were the characteristics of the language in use among the cultivated Englishmen of the fifteenth century. Pecock, though an opponent of the Lollards, showed a certain spirit of toleration, for which he received, towards the end of his life, the usual mediæval reward—persecution.

20. Annales Cambriæ. *Edited by* the Rev. John Williams ab Ithel, M.A. 1860.

These annals, which are in Latin, commence in the year 447, and come down to the year 1288. The earlier portion appears to be taken from an Irish Chronicle, which was also used by Tigernach, and by the compiler of the Annals of Ulster. During its first century it contains scarcely anything relating to Britain, the earliest direct concurrence with English history is relative to the mission of Augustine. Its notices throughout, though brief, are valuable. The annals were probably written at St. Davids, by Blegewryd, Archdeacon of Llandaff, the most learned man in his day in all Cymru.

21. The Works of Giraldus Cambrensis. Vols. I., II., III., and IV. *Edited by* J. S. Brewer, M.A., Professor of English Literature, King's College, London. Vols. V., VI., and VII. *Edited by* the Rev. James F. Dimock, M.A., Rector of Barnburgh, Yorkshire. 1861–1877.

These volumes contain the historical works of Gerald du Barry, who lived in the reigns of Henry II., Richard I., and John, and attempted to re-establish the independence of Wales by restoring the see of St. Davids to its ancient primacy. His works are of a very miscellaneous nature, both in prose and verse, and are remarkable chiefly for the racy and original anecdotes which they contain relating to contemporaries. He is the only Welsh writer of any importance who has contributed so much to the mediæval literature of this country, or assumed, in consequence of his nationality, so free and independent a tone. His frequent travels in Italy, in France, in Ireland, and in Wales, gave him opportunities for observation which did not generally fall to the lot of mediæval writers in the twelfth and thirteenth centuries, and of these observations Giraldus has made due use. Only extracts from these treatises have been printed before, and almost all of them are taken from unique manuscripts.

The Topographia Hibernica (in Vol. V.) is the result of Giraldus' two visits to Ireland. The first in the year 1183, the second in 1185–6, when he accompanied Prince John into that country. Curious as this treatise is, Mr. Dimock is of opinion that it ought not to be accepted as sober truthful history, for Giraldus himself states that truth was not his main object, and that he compiled the work for the purpose of sounding the praises of Henry the Second. Elsewhere, however, he declares that he had stated nothing in the Topographia of the truth of which he was not well assured, either by his own eyesight or by the testimony, with all diligence elicited, of the most trustworthy and authentic men in the country; that though he did not put just the same full faith in their reports as in what he had himself seen, yet, as they only related what they had themselves seen, he could not but believe such credible witnesses. A very interesting portion of this treatise is devoted to the animals of Ireland. It shows that he was a very accurate and acute observer, and his descriptions are given in a way that a scientific naturalist of the present day could hardly improve upon. The Expugnatio Hibernica was written about the year 1188 and may be regarded rather as a great epic than a sober relation of acts occurring in his own days. No one can peruse it without coming to the conclusion that it is rather a poetical fiction than a prosaic truthful history.

Vol. VI. contains the Itinerarium Kambriæ et Descriptio Kambriæ: and Vol. VII., the lives of S. Remigius and S. Hugh.

22. Letters and Papers illustrative of the Wars of the English in France during the Reign of Henry the Sixth, King of England. Vol. I., and Vol. II. (in Two Parts). *Edited by* the Rev. Joseph Stevenson, M.A., of University College, Durham, and Vicar of Leighton Buzzard. 1861–1864.

The letters and papers contained in these volumes are derived chiefly from originals or contemporary copies extant in the Bibliothèque Impériale, and the Depôt des Archives, in Paris. They illustrate the line of policy adopted by John Duke of Bedford and his successors during their government of Normandy, and such other provinces of France as had been acquired by Henry V. We may here trace, step by step, the gradual declension of the English power, until we are prepared to read of its final overthrow.

23. The Anglo-Saxon Chronicle, according to the several Original Authorities. Vol. I., Original Texts. Vol. II., Translation. *Edited and translated by* Benjamin Thorpe, Esq., Member of the Royal Academy of Sciences at Munich, and of the Society of Netherlandish Literature at Leyden. 1861.

This Chronicle, extending from the earliest history of Britain to the year 1154, is justly the boast of England; for no other nation can produce any history, written in its own vernacular, at all approaching it, either in antiquity, truthfulness, or extent, the historical books of the Bible alone excepted. There are at present six independent manuscripts of the Saxon Chronicle, ending in different years, and written in different parts of the country. In this edition, the text of each manuscript is printed in columns on the same page, so that the student may see at a glance the various changes which occur in orthography, whether arising from locality or age.

24. Letters and Papers illustrative of the Reigns of Richard III. and Henry VII. Vols. I. and II. *Edited by* James Gairdner, Esq. 1861–1863.

The Papers are derived from MSS. in the Public Record Office, the British Museum, and other repositories. The period to which they refer is unusually destitute of chronicles and other sources of historical information, so that the light obtained from these documents is of special importance. The principal contents of the volumes are some diplomatic Papers of Richard III.; correspondence between Henry VII. and Ferdinand and Isabella of Spain; documents relating to Edmund de la Pole, Earl of Suffolk; and a portion of the correspondence of James IV. of Scotland.

25. Letters of Bishop Grosseteste, illustrative of the Social Condition of his Time. *Edited by* Henry Richards Luard, M.A., Fellow and Assistant Tutor of Trinity College, Cambridge. 1861.

The Letters of Robert Grosseteste (131 in number) are here collected from various sources, and a large portion of them is printed for the first time. They range in date from about 1210 to 1253, and relate to various matters connected not only with the political history of England during the reign of Henry III., but with its ecclesiastical condition. They refer especially to the diocese of Lincoln, of which Grosseteste was bishop.

26. Descriptive Catalogue of Manuscripts relating to the History of Great Britain and Ireland. Vol. I. (in Two Parts); Anterior to the Norman Invasion. Vol. II.; 1066–1200. Vol. III.; 1200–1327. *By* Sir Thomas Duffus Hardy, D.C.L., Deputy Keeper of the Public Records. 1862–1871.

The object of this work is to publish notices of all known sources of British history, both printed and unprinted, in one continued sequence. The materials, when historical (as distinguished from biographical), are arranged under the year in which the latest event is recorded in the chronicle or history, and not under the period in which its author, real or supposed, flourished. Biographies are enumerated under the year in which the person commemorated died, and no under the year in which the life was written. This arrangement has two advantages; the materials for any given period may be seen at a glance; and if the reader knows the time when an author wrote, and the number of years that had elapsed between the date of the events and the time the writer flourished, he will generally be enabled to form a fair estimate of the comparative value of the narrative itself. A brief analysis of each work has been added when deserving it, in which the original portions are distinguished from those which are mere compilations. When possible, the sources are indicated from which such compilations have been derived. A biographical sketch of the author of each piece has been added, and a brief notice has also been given of such British authors as have written on historical subjects.

27. Royal and other Historical Letters illustrative of the Reign of Henry III. Vol. I., 1216–1235. Vol. II., 1236–1272. *Selected and edited by* the Rev. W. W. Shirley, D.D., Regius Professor in Ecclesiastical History, and Canon of Christ Church, Oxford. 1862–1866.

The letters contained in these volumes are derived chiefly from the ancient correspondence formerly in the Tower of London, and now in the Public Record Office. They illustrate the political history of England during the growth of its liberties, and throw considerable light upon the personal history of Simon de Montfort. The affairs of France form the subject of many of them, especially in regard to the province of Gascony. The entire collection consists of nearly 700 documents, the greater portion of which is printed for the first time.

28. Chronica Monasterii S. Albani.—1. Thomæ Walsingham Historia Anglicana; Vol. I., 1272–1381: Vol. II., 1381–1422. 2. Willelmi Rishanger Chronica et Annales, 1259–1307. 3. Johannis de Trokelowe et Henrici de Blaneforde Chronica et Annales, 1259–1296; 1307–1324; 1392–1406. 4. Gesta Abbatum Monasterii S. Albani, a Thoma Walsingham, regnante Ricardo Secundo, ejusdem Ecclesiæ Præcentore, compilata; Vol. I., 793–1290: Vol. II., 1290–1349: Vol. III., 1349–1411. 5. Johannis Amundesham, Monachi Monasterii S. Albani, ut videtur, Annales; Vols. I.

and II. 6. REGISTRA QUORUNDAM ABBATUM MONASTERII S. ALBANI, QUI SÆCULO XV^{mo} FLORUERE; Vol. I., REGISTRUM ABBATIÆ JOHANNIS WHETHAMSTEDE, ABBATIS MONASTERII SANCTI ALBANI, ITERUM SUSCEPTÆ; ROBERTO BLAKENEY, CAPELLANO, QUONDAM ADSCRIPTUM: Vol. II., REGISTRA JOHANNIS WHETHAMSTEDE, WILLELMI ALBON, ET WILLELMI WALINGFORDE, ABBATUM MONASTERII SANCTI ALBANI, CUM APPENDICE, CONTINENTE QUASDAM EPISTOLAS, A JOHANNE WHETHAMSTEDE CONSCRIPTAS. 7. YPODIGMA NEUSTRIÆ, A THOMA WALSINGHAM, QUONDAM MONACHO MONASTERII S. ALBANI, CONSCRIPTUM. *Edited by* HENRY THOMAS RILEY, Esq., M.A., Cambridge and Oxford; and of the Inner Temple, Barrister-at-Law. 1863–1876.

In the first two volumes is a History of England, from the death of Henry III. to the death of Henry V., by Thomas Walsingham, Precentor of St. Albans, from MS. VII. in the Arundel Collection in the College of Arms, London, a manuscript of the fifteenth century, collated with MS. 13 E. IX. in the King's Library in the British Museum, and MS. VII. in the Parker Collection of Manuscripts at Corpus Christi College, Cambridge.

In the third volume is a Chronicle of English History, attributed to William Rishanger, who lived in the reign of Edward I., from the Cotton. MS. Faustina B. IX. in the British Museum, collated with MS. 14 C. VII. (fols. 219–231) in the King's Library, British Museum, and the Cotton MS. Claudius E. III., fols. 306–331: an account of transactions attending the award of the kingdom of Scotland to John Balliol, 1291–1292, from MS. Cotton. Claudius D. VI., also attributed to William Rishanger, but on no sufficient ground: a short Chronicle of English History, 1292 to 1300, by an unknown hand, from MS. Cotton. Claudius D. VI.: a short Chronicle Willelmi Rishanger Gesta Edwardi Primi, Regis Angliæ, from MS. 14 C. I. in the Royal Library, and MS. Cotton. Claudius D. VI., with Annales Regum Angliæ, probably by the same hand: and fragments of three Chronicles of English History, 1285 to 1307.

In the fourth volume is a Chronicle of English History, 1259 to 1296, from MS. Cotton. Claudius D. VI.: Annals of Edward II., 1307 to 1323, by John de Trokelowe, a monk of St. Albans, and a continuation of Trokelowe's Annals, 1323, 1324, by Henry de Blaneforde, both from MS. Cotton. Claudius D. VI.: a full Chronicle of English History, 1392 to 1406, from MS. VII. in the Library of Corpus Christi College, Cambridge; and an account of the Benefactors of St. Albans, written in the early part of the fifteenth century, from MS. VI. in the same Library.

The fifth, sixth, and seventh volumes contain a history of the Abbots of St. Albans, 793 to 1411, mainly compiled by Thomas Walsingham, from MS. Cotton. Claudius E. IV., in the British Museum: with a Continuation, from the closing pages of Parker MS. VII., in the Library of Corpus Christi College, Cambridge.

The eighth and ninth volumes, in continuation of the Annals, contain a Chronicle, probably by John Amundesham, a monk of St. Albans.

The tenth and eleventh volumes relate especially to the acts and proceedings of Abbots Whethamstede, Albon, and Wallingford, and may be considered as a memorial of the chief historical and domestic events during those periods.

The twelfth volume contains a compendious History of England to the reign of Henry V., and of Normandy in early times, also by Thomas Walsingham, and dedicated to Henry V. The compiler has often substituted other authorities in place of those consulted in the preparation of his larger work.

29. CHRONICON ABBATIÆ EVESHAMENSIS, AUCTORIBUS DOMINICO PRIORE EVESHAMIÆ ET THOMA DE MARLEBERGE ABBATE, A FUNDATIONE AD ANNUM 1213, UNA CUM CONTINUATIONE AD ANNUM 1418. *Edited by* the Rev. W. D. MACRAY, M.A., Bodleian Library, Oxford. 1863.

The Chronicle of Evesham illustrates the history of that important monastery from its foundation by Egwin, about 690, to the year 1418. Its chief feature is an autobiography, which makes us acquainted with the inner daily life of a great abbey, such as but rarely has been recorded. Interspersed are many notices of general, personal, and local history which will be read with much interest. This work exists in a single MS., and is for the first time printed.

30. Ricardi de Cirencestria Speculum Historiale de Gestis Regum Angliæ. Vol. I., 447–871. Vol. II., 872–1066. *Edited by* John E. B. Mayor, M.A., Fellow of St. John's College, Cambridge. 1863–1869.

The compiler, Richard of Cirencester, was a monk of Westminster, 1355–1400. In 1391 he obtained a licence to make a pilgrimage to Rome. His history, in four books, extends from 447 to 1066. He announces his intention of continuing it, but there is no evidence that he completed any more. This chronicle gives many charters in favour of Westminster Abbey, and a very full account of the lives and miracles of the saints, especially of Edward the Confessor, whose reign occupies the fourth book. A treatise on the Coronation, by William of Sudbury, a monk of Westminster, fills book iii. c. 3. It was on this author that C. J. Bertram fathered his forgery, *De Situ Brittaniæ*, in 1747.

31. Year Books of the Reign of Edward the First. Years 20–21, 21–22, 30–31, 32–33, and 33–35. *Edited and translated by* Alfred John Horwood, Esq., of the Middle Temple, Barrister-at-Law. 1863–1879.

The volumes known as the "Year Books" contain reports in Norman-French of cases argued and decided in the Courts of Common Law. They may be considered to a great extent as the "lex non scripta" of England, and have been held in the highest veneration by the ancient sages of the law, and were received by them as the repositories of the first recorded judgments and dicta of the great legal luminaries of past ages. They are also worthy of the attention of the general reader on account of the historical information and the notices of public and private persons which they contain, as well as the light which they throw on ancient manners and customs.

32. Narratives of the Expulsion of the English from Normandy, 1449–1450.—Robertus Blondelli de Reductione Normanniæ: Le Recouvrement de Normendie, par Berry, Hérault du Roy: Conferences between the Ambassadors of France and England. *Edited, from MSS. in the Imperial Library at Paris, by* the Rev. Joseph Stevenson, M.A., of University College, Durham. 1863.

This volume contains the narrative of an eye-witness who details with considerable power and minuteness the circumstances which attended the final expulsion of the English from Normandy in the year 1450. The history commences with the infringement of the truce by the capture of Fougères, and ends with the battle of Formigny and the embarkation of the Duke of Somerset. The whole period embraced is less than two years.

33. Historia et Cartularium Monasterii S. Petri Gloucestriæ. Vols. I., II., and III. *Edited by* W. H. Hart, Esq., F.S.A., Membre correspondant de la Société des Antiquaires de Normandie. 1863–1867.

This work consists of two parts, the History and the Cartulary of the Monastery of St. Peter, Gloucester. The history furnishes an account of the monastery from its foundation, in the year 681, to the early part of the reign of Richard II., together with a calendar of donations and benefactions. It treats principally of the affairs of the monastery, but occasionally matters of general history are introduced. Its authorship has generally been assigned to Walter Froucester, the twentieth abbot, but without any foundation.

34. Alexandri Neckam de Naturis Rerum libri duo; with Neckam's Poem, De Laudibus Divinæ Sapientiæ. *Edited by* Thomas Wright, Esq., M.A. 1863.

Neckam was a man who devoted himself to science, such as it was in the twelfth century. In the "De Naturis Rerum" are to be found what may be called the rudiments of many sciences mixed up with much error and ignorance. Neckam was not thought infallible, even by his contemporaries, for Roger Bacon remarks of him, "this Alexander in many things wrote what was true and useful; "but he neither can nor ought by just title to be reckoned among authorities." Neckam, however, had sufficient independence of thought to differ from some of the schoolmen who in his time considered themselves the only judges of literature. He had his own views in morals, and in giving us a glimpse of them, as well as of his other opinions, he throws much light upon the manners, customs, and general tone of thought prevalent in the twelfth century. The poem entitled "De Laudibus Divinæ Sapientiæ" appears to be a metrical paraphrase or abridgment of the "De Naturis Rerum." It is written in the elegiac metre;

and though there are many lines which violate classical rules, it is, as a whole, above the ordinary standard of mediæval Latin.

35. LEECHDOMS, WORTCUNNING, AND STARCRAFT OF EARLY ENGLAND; being a Collection of Documents illustrating the History of Science in this Country before the Norman Conquest. Vols. I., II., and III. *Collected and edited by* the Rev. T. OSWALD COCKAYNE, M.A., of St. John's College, Cambridge. 1864–1866.

This work illustrates not only the history of science, but the history of superstition. In addition to the information bearing directly upon the medical skill and medical faith of the times, there are many passages which incidentally throw light upon the general mode of life and ordinary diet. The volumes are interesting not only in their scientific, but also in their social aspect. The manuscripts from which they have been printed are valuable to the Anglo-Saxon scholar for the illustrations they afford of Anglo-Saxon orthography.

36. ANNALES MONASTICI. Vol. I.:—Annales de Margan, 1066–1232; Annales de Theokesberia, 1066–1263; Annales de Burton, 1004–1263. Vol. II.:—Annales Monasterii de Wintonia, 519–1277; Annales Monasterii de Waverleia, 1–1291. Vol. III.:—Annales Prioratus de Dunstaplia, 1–1297. Annales Monasterii de Bermundeseia, 1042–1432. Vol. IV.:—Annales Monasterii de Oseneia, 1016–1347; Chronicon vulgo dictum Chronicon Thomæ Wykes, 1066–1289; Annales Prioratus de Wigornia, 1–1377. Vol. V.:—Index and Glossary. *Edited by* HENRY RICHARDS LUARD, M.A., Fellow and Assistant Tutor of Trinity College, and Registrary of the University, Cambridge. 1864–1869.

The present collection of Monastic Annals embraces all the more important chronicles compiled in religious houses in England during the thirteenth century. These distinct works are ten in number. The extreme period which they embrace ranges from the year 1 to 1432, although they refer more especially to the reigns of John, Henry III., and Edward I. Some of these narratives have already appeared in print, but others are printed for the first time.

37. MAGNA VITA S. HUGONIS EPISCOPI LINCOLNIENSIS. From Manuscripts in the Bodleian Library, Oxford, and the Imperial Library, Paris. *Edited by* the Rev. JAMES F. DIMOCK, M.A., Rector of Barnburgh, Yorkshire. 1864.

This work contains a number of very curious and interesting incidents, and being the work of a contemporary, is very valuable, not only as a truthful biography of a celebrated ecclesiastic, but as the work of a man, who, from personal knowledge, gives notices of passing events, as well as of individuals who were then taking active part in public affairs. The author, in all probability, was Adam Abbot of Evesham. He was domestic chaplain and private confessor of Bishop Hugh, and in these capacities was admitted to the closest intimacy. Bishop Hugh was Prior of Witham for 11 years before he became Bishop of Lincoln. His consecration took place on the 21st September 1186; he died on the 16th of November 1200; and was canonized in 1220.

38. CHRONICLES AND MEMORIALS OF THE REIGN OF RICHARD THE FIRST. Vol. I.:—ITINERARIUM PEREGRINORUM ET GESTA REGIS RICARDI. Vol. II.:—EPISTOLÆ CANTUARIENSES; the Letters of the Prior and Convent of Christ Church, Canterbury; 1187 to 1199. *Edited by* WILLIAM STUBBS, M.A., Vicar of Navestock, Essex, and Lambeth Librarian. 1864–1865.

The authorship of the Chronicle in Vol. I., hitherto ascribed to Geoffrey Vinesauf, is now more correctly ascribed to Richard, Canon of the Holy Trinity of London. The narrative extends from 1187 to 1199; but its chief interest consists in the minute and authentic narrative which it furnishes of the exploits of Richard I., from his departure from England in December 1189 to his death in 1199. The author states in his prologue that he was an eye-witness of much that he records; and various incidental circumstances which occur in the course of the narrative confirm this assertion.

The letters in Vol. II., written between 1187 and 1199, are of value as furnishing authentic materials for the history of the ecclesiastical condition of England during the reign of Richard I. They had their origin in a dispute which arose from the attempts of Baldwin and Hubert, archbishops of Canterbury, to

found a college of secular canons, a project which gave great umbrage to the monks of Canterbury, who saw in it a design to supplant them in their function of metropolitan chapter. These letters are printed, for the first time, from a MS. belonging to the archiepiscopal library at Lambeth.

39. Recueil des Croniques et anchiennes Istories de la Grant Bretaigne a present nomme Engleterre, par Jehan de Waurin. Vol. I. Albina to 688. Vol. II., 1399–1422. Vol. III., 1422–1431. *Edited by* William Hardy, Esq., F.S.A. 1864–1879.

40. A Collection of the Chronicles and ancient Histories of Great Britain, now called England, by John de Wavrin. Albina to 688. (Translation of the preceding Vol. I.) *Edited and translated by* William Hardy, Esq., F.S.A. 1864.

This curious chronicle extends from the fabulous period of history down to the return of Edward IV. to England in the year 1471 after the second deposition of Henry VI. The manuscript from which the text of the work is taken is preserved in the Imperial Library at Paris, and is believed to be the only complete and nearly contemporary copy in existence. The work, as originally bound, was comprised in six volumes, since rebound in morocco in 12 volumes, folio maximo, vellum, and is illustrated with exquisite miniatures, vignettes, and initial letters. It was written towards the end of the fifteenth century, having been expressly executed for Louis de Bruges, Seigneur de la Gruthuyse and Earl of Winchester, from whose cabinet it passed into the library of Louis XII. at Blois.

41. Polychronicon Ranulphi Higden, with Trevisa's Translation. Vols. I. and II. *Edited by* Churchill Babington, B.D., Senior Fellow of St. John's College, Cambridge. Vols. III., IV., V., VI., and VII. *Edited by* the Rev. Joseph Rawson Lumby, D.D., Norrisian Professor of Divinity, Vicar of St. Edward's, Fellow of St. Catharine's College, and late Fellow of Magdalene College, Cambridge. 1865–1879.

This is one of the many mediæval chronicles which assume the character of a history of the world. It begins with the creation, and is brought down to the author's own time, the reign of Edward III. Prefixed to the historical portion, is a chapter devoted to geography, in which is given a description of every known land. To say that the Polychronicon was written in the fourteenth century is to say that it is not free from inaccuracies. It has, however, a value apart from its intrinsic merits. It enables us to form a very fair estimate of the knowledge of history and geography which well-informed readers of the fourteenth and fifteenth centuries possessed, for it was then the standard work on general history.

The two English translations, which are printed with the original Latin, afford interesting illustrations of the gradual change of our language, for one was made in the fourteenth century, the other in the fifteenth. The differences between Trevisa's version and that of the unknown writer are often considerable.

42. Le Livere de Reis de Brittanie e Le Livere de Reis de Engletere. *Edited by* John Glover, M.A., Vicar of Brading, Isle of Wight, formerly Librarian of Trinity College, Cambridge. 1865.

These two treatises, though they cannot rank as independent narratives, are nevertheless valuable as careful abstracts of previous historians, especially "Le Livere de Reis de Engletere." Some various readings are given which are interesting to the philologist as instances of semi-Saxonized French.

It is supposed that Peter of Ickham must have been the author, but no certain conclusion on that point has been arrived at.

43. Chronica Monasterii de Melsa, ab Anno 1150 usque ad Annum 1406. Vols. I., II., and III. *Edited by* Edward Augustus Bond, Esq., Assistant Keeper of the Manuscripts, and Egerton Librarian, British Museum. 1866–1868.

The Abbey of Meaux was a Cistercian house, and the work of its abbot is both curious and valuable. It is a faithful and often minute record of the establishment of a religious community, of its progress in forming an ample revenue, of its struggles to maintain its acquisitions, and of its relations to the governing institutions of the country. In addition to the private affairs of the monastery, some light is thrown upon the public events of the time, which are however kept distinct, and appear at the end of the history of each abbot's administration. The text has been printed from what is said to be the autograph of the original compiler, Thomas de Burton, the nineteenth abbot.

44. Matthæi Parisiensis Historia Anglorum, sive, ut vulgo dicitur, Historia Minor. Vols. I., II., and III. 1067–1253. *Edited by* Sir Frederic Madden, K.H., Keeper of the Department of Manuscripts, British Museum. 1866–1869.

The exact date at which this work was written is, according to the chronicler, 1250. The history is of considerable value as an illustration of the period during which the author lived, and contains a good summary of the events which followed the Conquest. This minor chronicle is, however, based on another work (also written by Matthew Paris) giving fuller details, which has been called the "Historia Major." The chronicle here published, nevertheless, gives some information not to be found in the greater history.

45. Liber Monasterii de Hyda: a Chronicle and Chartulary of Hyde Abbey, Winchester, 455–1023. *Edited, from a Manuscript in the Library of the Earl of Macclesfield, by* Edward Edwards, Esq. 1866.

The "Book of Hyde" is a compilation from much earlier sources which are usually indicated with considerable care and precision. In many cases, however, the Hyde chronicler appears to correct, to qualify, or to amplify—either from tradition or from sources of information not now discoverable—the statements, which, in substance, he adopts. He also mentions, and frequently quotes from writers whose works are either entirely lost or at present known only by fragments.

There is to be found, in the "Book of Hyde," much information relating to the reign of King Alfred which is not known to exist elsewhere. The volume contains some curious specimens of Anglo-Saxon and Mediæval English.

46. Chronicon Scotorum: a Chronicle of Irish Affairs, from the Earliest Times to 1135; with a Supplement, containing the Events from 1141 to 1150. *Edited, with a Translation, by* William Maunsell Hennessy, Esq., M.R.I.A. 1866.

There is, in this volume, a legendary account of the peopling of Ireland and of the adventures which befell the various heroes who are said to have been connected with Irish history. The details are, however, very meagre both for this period and for the time when history becomes more authentic. The plan adopted in the chronicle gives the appearance of an accuracy to which the earlier portions of the work cannot have any claim. The succession of events is marked, year by year, from A.M. 1599 to A.D. 1150. The principal events narrated in the later portion of the work are, the invasions of foreigners, and the wars of the Irish among themselves. The text has been printed from a MS. preserved in the library of Trinity College, Dublin, written partly in Latin, partly in Irish.

47. The Chronicle of Pierre de Langtoft, in French Verse, from the earliest Period to the Death of Edward I. Vols. I. and II. *Edited by* Thomas Wright, Esq., M.A. 1866–1868.

It is probable that Pierre de Langtoft was a canon of Bridlington, in Yorkshire, and that he lived in the reign of Edward I., and during a portion of the reign of Edward II. This chronicle is divided into three parts; in the first is an abridgment of Geoffrey of Monmouth's "Historia Britonum," in the second, a history of the Anglo-Saxon and Norman kings, down to the death of Henry III., and in the third a history of the reign of Edward I. The principal object of the work was apparently to show the justice of Edward's Scottish wars. The language is singularly corrupt, and a curious specimen of the French of Yorkshire.

48. The War of the Gaedhil with the Gaill, or, The Invasions of Ireland by the Danes and other Norsemen. *Edited, with a Translation, by* James Henthorn Todd, D.D., Senior Fellow of Trinity College, and Regius Professor of Hebrew in the University, Dublin. 1867.

The work in its present form, in the editor's opinion, is a comparatively modern version of an undoubtedly ancient original. That it was compiled from contemporary materials has been proved by curious incidental evidence. It is stated in the account given of the battle of Clontarf that the full tide in Dublin Bay on the day of the battle (23 April 1014) coincided with sunrise; and that the returning tide in the evening aided considerably in the defeat of the Danes. The fact has been verified by astronomical calculations, and the inference is that the author of the chronicle, if not himself an eye-witness, must have derived his information from those who were eye-witnesses. The contents of the work are sufficiently described in its title. The story is told after the manner of the Scandinavian Sagas, with poems and fragments of poems introduced into the prose narrative.

49. GESTA REGIS HENRICI SECUNDI BENEDICTI ABBATIS. THE CHRONICLE OF THE REIGNS OF HENRY II. AND RICHARD I., 1169–1192, known under the name of BENEDICT OF PETERBOROUGH. Vols. I. and II. *Edited by* WILLIAM STUBBS, M.A., Regius Professor of Modern History, Oxford, and Lambeth Librarian. 1867.

This chronicle of the reigns of Henry II. and Richard I., known commonly under the name of Benedict of Peterborough, is one of the best existing specimens of a class of historical compositions of the first importance to the student.

50. MUNIMENTA ACADEMICA, OR, DOCUMENTS ILLUSTRATIVE OF ACADEMICAL LIFE AND STUDIES AT OXFORD (in Two Parts). *Edited by* the Rev. HENRY ANSTEY, M.A., Vicar of St. Wendron, Cornwall, and lately Vice-Principal of St. Mary Hall, Oxford. 1868.

This work will supply materials for a History of Academical Life and Studies in the University of Oxford during the 13th, 14th, and 15th centuries.

51. CHRONICA MAGISTRI ROGERI DE HOUEDENE. Vols. I., II., III., and IV. *Edited by* WILLIAM STUBBS, M.A., Regius Professor of Modern History, and Fellow of Oriel College, Oxford. 1868–1871.

This work has long been justly celebrated, but not thoroughly understood until Mr. Stubbs' edition. The earlier portion, extending from 732 to 1148, appears to be a copy of a compilation made in Northumbria about 1161, to which Hoveden added little. From 1148 to 1169—a very valuable portion of this work—the matter is derived from another source, to which Hoveden appears to have supplied little, and not always judiciously. From 1170 to 1192 is the portion which corresponds with the Chronicle known under the name of Benedict of Peterborough (*see* No. 49); but it is not a copy, being sometimes an abridgment, at others a paraphrase; occasionally the two works entirely agree; showing that both writers had access to the same materials, but dealt with them differently. From 1192 to 1201 may be said to be wholly Hoveden's work: it is extremely valuable, and an authority of the first importance.

52. WILLELMI MALMESBIRIENSIS MONACHI DE GESTIS PONTIFICUM ANGLORUM LIBRI QUINQUE. *Edited, from William of Malmesbury's Autograph MS., by* N. E. S. A. HAMILTON, Esq., of the Department of Manuscripts, British Museum. 1870.

William of Malmesbury's "Gesta Pontificum" is the principal foundation of English Ecclesiastical Biography, down to the year 1122. The manuscript which has been followed in this Edition is supposed by Mr. Hamilton to be the author's autograph, containing his latest additions and amendments.

53. HISTORIC AND MUNICIPAL DOCUMENTS OF IRELAND, FROM THE ARCHIVES OF THE CITY OF DUBLIN, &c. 1172–1320. *Edited by* JOHN T. GILBERT, Esq., F.S.A., Secretary of the Public Record Office of Ireland. 1870.

A collection of original documents, elucidating mainly the history and condition of the municipal, middle, and trading classes under or in relation with the rule of England in Ireland,—a subject hitherto in almost total obscurity. Extending over the first hundred and fifty years of the Anglo-Norman settlement, the series includes charters, municipal laws and regulations, rolls of names of citizens and members of merchant-guilds, lists of commodities with their rates, correspondence, illustrations of relations between ecclesiastics and laity; together with many documents exhibiting the state of Ireland during the presence there of the Scots under Robert and Edward Bruce.

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The original of this chronicle has passed under various names. The title of "Annals of Loch Cé" was given to it by Professor O'Curry, on the ground that it was transcribed for Brian Mac Dermot, an Irish chieftain, who resided on the island in Loch Cé, in the county of Roscommon. It adds much to the materials for the civil and ecclesiastical history of Ireland; and contains many curious references to English and foreign affairs, not noticed in any other chronicle.

55. MONUMENTA JURIDICA. THE BLACK BOOK OF THE ADMIRALTY, WITH APPENDICES. Vols. I., II., III., and IV. *Edited by* SIR TRAVERS TWISS, Q.C., D.C.L. 1871–1876.

This book contains the ancient ordinances and laws relating to the navy, and was probably compiled for the use of the Lord High Admiral of England. Selden calls it the "jewel of the Admiralty Records." Prynne ascribes to the Black Book the same authority in the Admiralty as the Black and Red Books have in the Court of Exchequer, and most English writers on maritime law recognize its importance.

56. MEMORIALS OF THE REIGN OF HENRY VI.:—OFFICIAL CORRESPONDENCE OF THOMAS BEKYNTON, SECRETARY TO HENRY VI., AND BISHOP OF BATH AND WELLS. *Edited, from a MS. in the Archiepiscopal Library at Lambeth, with an Appendix of Illustrative Documents, by* the Rev. GEORGE WILLIAMS, B.D., Vicar of Ringwood, late Fellow of King's College, Cambridge. Vols. I. and II. 1872.

These curious volumes are of a miscellaneous character, and were probably compiled under the immediate direction of Bekynton before he had attained to the Episcopate. They contain many of the Bishop's own letters, and several written by him in the King's name; also letters to himself while Royal Secretary, and others addressed to the King. This work elucidates some points in the history of the nation during the first half of the fifteenth century.

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This work contains the "Chronica Majora" of Matthew Paris, one of the most valuable and frequently consulted of the ancient English Chronicles. It is published from its commencement, for the first time. The editions by Archbishop Parker, and William Wats, severally begin at the Norman Conquest.

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This work, now printed in full for the first time, has long been a *desideratum* by Historical Scholars. The first portion, however, is not of much importance, being only a compilation from earlier writers. The part relating to the first quarter of the thirteenth century is the most valuable and interesting.

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Henry of Huntingdon's work was first printed by Sir Henry Savile, in 1596, in his "Scriptores post Bedam," and reprinted at Frankfort in 1601. Both editions are very rare and inaccurate. The first five books of the History were published in 1848 in the "Monumenta Historica Britannica," which is out of print. The present volume contains the whole of the manuscript of Huntingdon's History in eight books, collated with a manuscript lately discovered at Paris.

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